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April 23, 2002

Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St., S.W. – Portals
Washington, DC 20554

RE: Application by Verizon-New Jersey Inc. for Authorization To Provide In-Region, InterLATA Services in the State of New Jersey, WC Docket No. 02-67

Dear Ms. Dortch:

Per the request of the Wireline Competition Bureau staff, Verizon is providing its filing made with New Jersey Board of Public Utilities on April 22, 2002 in response to the Motions for Consideration filed by the Division of Ratepayer Advocate and AT&T and WorldCom. The twenty-page limit does not apply as set forth in DA 02-718. If you have any questions, please do not hesitate to call me.

Sincerely,

Clint E. Odom / AD

Clint E. Odom

Attachment

cc: A. Johns
D. Shetler
R. Kwiatkowski
J. Swift
S. Pie

April 22, 2002

VIA E-MAIL AND OVERNIGHT MAIL

Kristi Izzo, Secretary of the Board
New Jersey Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

Re: I/M/O the Board's Review of Unbundled Network Elements Rates, Terms and Conditions of Bell Atlantic-New Jersey, Inc.
Docket No.: TO00060356

Dear Secretary Izzo:

On behalf of Verizon New Jersey Inc. ("Verizon NJ") please find enclosed for filing an original and ten copies of the following: (1) a letter in response to the Motion for Reconsideration, dated April 3, 2002, filed by the Division of the Ratepayer Advocate, and (2) Verizon NJ's brief in response to AT&T Communication Inc.'s and WorldCom Inc.'s April 3, 2002 motions for reconsideration and clarification of the Board Of Public Utilities March 6, 2002 Order in the above captioned matter

If you have any questions, please contact me.

Respectfully submitted,

Hesser G. McBride, Jr.

HGM:lmg
Enclosure
cc: (via e-mail and overnight mail) (w/enclosure)
Seema M. Singh, Acting Ratepayer Advocate
Frederick C. Pappalardo, Esq.
James H. Laskey, Esq.
Attached Service List (via e-mail and regular mail) (w/encl.)

April 22, 2002

VIA E-MAIL AND OVERNIGHT MAIL

Kristi Izzo, Secretary
New Jersey Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

RE: In the Matter of the Board's Review of Unbundled Network Elements Rates, Terms and Conditions of Bell Atlantic-New Jersey, Inc.
Docket No. TO00060356

Dear Secretary Izzo:

Verizon New Jersey Inc. ("Verizon NJ") submits this letter in response to the Motion for Reconsideration, dated April 3, 2002, filed by the Division of the Ratepayer Advocate ("Ratepayer Advocate") in the above referenced matter. The Ratepayer Advocate's motion fails to identify any factual or legal reasons that support the Ratepayer Advocate's request that the Board of Public Utilities ("Board") reverse substantial portions of its March 6, 2002 Decision and Order.[1]

It is well settled that the Board will not consider a motion for reconsideration absent a showing that there has been a "new development or new evidence relating to established facts or material misapprehension by the Board concerning an essential matter which is critical to its final determination."[2] In its request for reconsideration, the Ratepayer Advocate rehashes arguments that have previously been rejected by the Board. Additionally, the Ratepayer Advocate raises "new" legal arguments that it could have raised during the course of the proceeding. Such arguments include the unsupported assertion that, rather than establish specific Total Element Long Run Incremental Cost ("TELRIC") rates, the Board is required to establish a "range" of TELRIC rates.

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[1] In the Matter of the Board's Review of Unbundled Network Elements Rates, Terms and Conditions of Bell Atlantic-New Jersey, Inc., Docket No. TO00060356, Decision and Order, New Jersey Board of Public Utilities (March 6, 2002) (hereafter "Final Order").

[2] Re Public Service Electric & Gas Co., 199 W.L. 33178824, 1-5, Docket No. EO97070461 (N.J.B.P.U. 1999).

Ultimately, however, the Ratepayer Advocate's motion consists of nothing more than a series of conclusory statements expressing its dissatisfaction with the Board's final determination, rather than any reasoned bases for the Board to reconsider it prior determination. In fact, the Ratepayer Advocate does not even attempt to demonstrate changed circumstances, that the Board's ruling was arbitrary, capricious or unreasonable, or that it was based upon an application of an improper legal standard. The Ratepayer Advocate's request should be denied on that basis alone.

Significantly, although the Ratepayer Advocate now alleges that certain rates established by the Board do not comply with TELRIC, the UNE loop rates and the switching cost rates established by the Board in this proceeding are lower than those recommended by the Ratepayer Advocate.[3] It is disingenuous for the Ratepayer Advocate to now argue that the rates established by the Board are "not TELRIC compliant" after having argued, during the proceeding, that rates in excess of those established by the Board complied with the TELRIC standard.

DISCUSSION

The following is Verizon NJ's response to the eleven numbered paragraphs set forth in the Ratepayer Advocate's motion.

1. Although the Ratepayer Advocate's expert witnesses offered no testimony on the issue during the evidentiary hearings, the Ratepayer Advocate now alleges that the local switching UNE rates adopted by the Board are "outside" of a "reasonable range of TELRIC rates" because the Board established switch usage charge includes costs for vertical services.[4] The Ratepayer Advocate however ignores the fact that the switching rates established by the Board are significantly lower than those recommended by the Ratepayer Advocate's expert witnesses.[5] Moreover, the Ratepayer Advocate's switched cost expert never criticized Verizon NJ's inclusion of vertical services costs in the end office switching UNE. Also, without any explanation, the Ratepayer Advocate alleges that intra-switched calls should not be charged for originating and terminating costs because "the call passes through the switch only once."[6] The Ratepayer Advocate's claims on these issues are both factually and legally unsupportable.

As discussed in Verizon NJ's brief in opposition to AT&T's and WorldCom's motions for reconsideration, the switching cost assumptions and the rate design methodology adopted

[3] The Board Staff noted that the Board's UNE rates are 29% lower than those recommended by the Ratepayer Advocate. In the Matter of the Board's Review of Unbundled Network Element Rates, Terms and Conditions, November 20, 2001, (Board Transcript, at 31-32). Specifically, the Ratepayer Advocate recommended that the UNE statewide loop rate be set at what the Ratepayer Advocate alleged was the TELRIC compliant rate of $9.79. The Ratepayer Advocate recommended that switching rates be established at $.003154 and $.002814 for originating and terminating service. Ratepayer Advocate Initial Brief, at 8 and 74; Exh. RPA-18, at 43.

[4] Ratepayer Advocate Motion, at 1.

[5] Exh. RPA-18, at 43.

[6] Ratepayer Advocate Motion, at 1.

by the Board (i.e., switching costs should be recovered based upon a flat port rate charge and a usage sensitive charge) are reasonable and fully consistent with the Board's past practice.[7] Because Verizon NJ's cost to provide vertical services are caused by the CLECs usage of those features,[8] it reasonable for the Board to maintain its rate design approach of allowing the costs of vertical features to be recovered through usage charges. Not surprisingly, the Ratepayer Advocate is unable to cite a single authority for its novel claim that TELRIC rates cannot include vertical service costs in the usage component of switching costs.

The Ratepayer Advocate's claim regarding intra-switched calls is equally unsupported. The Board established UNE rates require the imposition of originating and terminating costs for a switched call.[9] Even though an intra-switched call originates and terminates within the same switch, that switch is still required to perform both the originating and terminating functions. Accordingly, in order for Verizon NJ to be compensated for these functions, it is necessary that originating and terminating costs be charged for both inter and intra-switched calls.[10]

2. In paragraph 2 of its motion, the Ratepayer Advocate, without any reasoned explanation, alleges that the New Jersey local switching rates should be set at the same level established by the New York Public Service Commission.[11] It is well settled that TELRIC rates established by a State Commission should be based upon the forward-looking costs for the UNEs to be provided in a particular state.[12] There is no factual or legal basis for the Board to disregard New Jersey-specific cost information, including the substantial record in this proceeding, and simply adopt a single rate from another jurisdiction.[13] This is particularly true where that rate from the other jurisdiction represents one component of a comprehensive settlement that authorized certain rate increases in exchange for certain rate concessions.[14] Although somewhat unclear, the Ratepayer Advocate's argument appears to be influenced by

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[7] These issues are also addressed in Verizon NJ's Brief, dated April 22, 2002, in opposition to AT&T and WorldCom's Motions for Reconsideration. Verizon NJ hereby incorporates into this brief its positions in its brief in opposition to the AT&T and WorldCom motions.

[8] See Testimony of Verizon NJ witness Donald Albert, Exh. VNJ-11 at 14.

[9] Final Order, Attachment A, at 2.

[10] See Verizon NJ Brief In Opposition to AT&T and WorldCom Motions for Reconsideration.

[11] Ratepayer Advocate Motion, at 2.

[12] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket No. 96-98, (FCC 96-325) at ¶¶29, 674-703, (August 8, 1996) (hereafter "Local Competition Order").

[13] Id.

[14] Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements, Order Instituting Verizon Incentive Plan, Case 98-C-1357, New York Public Service Commission (February 27, 2002).

the FCC's Intercarrier Compensation Order establishing ISP rates.[15] However, as set forth in detail in Verizon's reply brief in this matter,[16] the ISP Compensation Order is completely unrelated to the establishment of cost-based specific UNE switching rates.

Moreover, the Board specifically found that the FCC's Intercarrier Compensation Order has no bearing on state specific UNE switching rates.[17]

3. In paragraph 3 of its Motion, the Ratepayer Advocate makes the legally unsupportable claim that the Board's Order is improper because it has "failed to identify the range of permissible TELRIC rates."[18] There is no legal requirement that the Board establish a "range" of permissible TELRIC rates, and no articulable reason for its attempting to do so. Instead, the Board is required to adopt cost based rates for Verizon NJ based upon the TELRIC methodology. Here, after conducting an extensive evidentiary proceeding, the Board established what it found to be specific TELRIC rates for the provision of services by Verizon NJ.

The case cited by the Ratepayer Advocate, Sprint Communications Co. v. FCC, 274 F.3d 549 (D.C. Cir. 1999), does not support the Ratepayer Advocate's claim that a "range" of TELRIC rates must be established. Rather, that case makes clear that the role of the state Commission is to set rates, and that the FCC in Section 271 proceedings has a different role -- that is, to determine whether the state–established rate is within a range that TELRIC would produce.[19] The Court noted that the establishment of TELRIC rates is not an "exact science" and there is not only one level at which a wholesale rate can be said to be just and reasonable. Therefore, "there is no single cost-recovery rate, but a [wide] zone of reasonableness."[20] Sprint Communications thus stands for the proposition that the range approach is appropriate for the FCC to use in the Section 271 context; the case does not support the proposition that the Board is required to establish a "range of rates." The Ratepayer Advocate's mischaracterization of the Board's obligation to establish TELRIC rates should be rejected.

4. Ignoring the substantial evidence in the record, including detailed testimony and exhibits sponsored by several witnesses, the Ratepayer Advocate alleges that all of the

[15] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order, CC Docket Nos. 96-98, 99-68, (FCC 01-131) (April 27, 2001).

[16] Verizon Reply Brief at 208-210.

[17] Final Order, at 252.

[18] Ratepayer Advocate Motion, at 2.

[19] Sprint Communications, 274 F.3d at 555 (affirming a finding by the FCC that the rates established by certain state commissions were TELRIC compliant because they were within a "range of reasonableness").

[20] Id., quoting FPC v. Conway Corp., 426 U.S. 271, 96 S. Ct. 199, 48 L.Ed.2d 626 (1976).

non-recurring rates established by the Board should be reconsidered.[21] Specifically, the Ratepayer Advocate alleges that the Board should order "motion studies, audits of work orders, cost tracking studies and analysis" and then, presumably, direct the parties to submit new, non-recurring costs studies.[22] The non-recurring cost studies sponsored by Verizon NJ in the proceeding were based upon voluminous surveys and detailed cost study information which was reviewed in detail by the parties, including the Ratepayer Advocate.[23] Moreover, the Board analyzed the record evidence and made specific adjustments to many of the work time estimates proposed by Verizon NJ. The Board does not require "motion studies, audits of work aides or cost tracking studies" to evaluate the reasonableness of work time estimates proposed by the parties and fully analyzed during the proceeding. There is simply no legal or factual basis for the Board to disregard, as the Ratepayer Advocate suggests, the substantial evidence in the record and start a new proceeding to establish new non-recurring rates.

5. In paragraph 5, the Ratepayer Advocate similarly seeks to "reopen the record to permit the introduction of additional evidence" for both recurring and non-recurring cost studies based upon "inputs" utilized by other state commissions that recently established UNE rates.[24] The Ratepayer Advocate also alleges that because Verizon has voluntarily introduced a promotional hot cut rate well below the rate established by the Board, the record should be reopened on this issue. Verizon NJ's voluntary introduction of a hot cut rate reduction and the fact that new UNE rates have been established by other state commissions, do not provide a legal or factual basis to "reopen" the record in this proceeding. A substantial record has already been developed by the Board and the Ratepayer Advocate's approach of attempting to reopen the record every time a decision is issued in another state would preclude forever the establishment of permanent UNE rates in New Jersey.

6. In paragraph 6 of its motion the Ratepayer Advocate renews its claim for the introduction of "additional evidence" because the Board established UNE rate for the "hot cut" differs from hot cut rates in other jurisdictions.[25] Because the cost studies filed by Verizon clearly set forth the methodology under which the hot cut rate was established and approved by the Board, there is no need for "additional evidence" on this issue.[26] Moreover, because Verizon has agreed to implement a promotional hot cut rate, there is no need for the Board to consider the Ratepayer Advocate's recommendation that the Board evaluate the hot cut rate in relation to other jurisdictions.

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[21] Ratepayer Advocate Motion, at 2.

[22] Id., at 2.

[23] See Exh. VNJ-8.

[24] Ratepayer Advocate Motion, at 2-3.

[25] Id., at 3.

[26] The "hot cut" rate is discussed in greater detail in Verizon NJ's April 22, 2002 brief in opposition to AT&T's and WorldCom's motions for reconsideration.

7. In paragraph 7, the Ratepayer Advocate restates its desire to reopen the record by arguing that "additional evidence" submitted by interested parties to the FCC in the Verizon NJ 271 proceeding should be introduced in this proceeding.[27] Despite its claim that there is "new evidence" before the FCC, the Ratepayer Advocate fails to cite a single piece of such evidence that would support reconsideration or reopening the record in this proceeding to incorporate the FCC record. The Ratepayer Advocate's highly unusual request that this proceeding should be reopened to incorporate the comments in the FCC 271 proceeding is without any legal or rational basis.

8. In paragraph 8 of its motion, the Ratepayer Advocate requests that the Board "clarify" that the UNE rates that it established "replace and supersede" prior UNE rates established by the Board in its December 2, 1997 Order. There is no need for such "clarification." The Board Summary Order clearly indicates that the new UNE rates are effective upon the issuance of the Summary Order.[28] Because the rates are in effect and Verizon NJ has submitted verifications to the Board demonstrating it is charging those rates, there is no need for clarification regarding the effective date of the new UNE rates.

9. Continuing its quest to reopen the record, the Ratepayer Advocate in paragraph 9 of its motion alleges that the "withdrawal" of Verizon's initial 271 application should cause the Board to reassess whether the rates that it established "foster" a competitive market in New Jersey. Verizon NJ's "withdrawal" of its initial 271 application does not provide a legal or factual basis for the Board to reopen the UNE record, particularly since the UNE rates established by the Board are lower than the TELRIC rates proposed by the Ratepayer Advocate during the proceeding.

Similarly, the Ratepayer Advocate alleges that the Board should consider the "benchmark analysis" performed by the FCC in connection with Verizon Rhode Island's long-distance application. The FCC's benchmark analysis is used by the FCC to determine if state-specific TELRIC rates are within a zone of reasonableness. Because the Board has established what it found to be TELRIC rates, there is no need for the Board "reopen" the record to apply the FCC's 271 "benchmark" analysis to those rates.

10. Without a single citation to the record or relevant law, the Ratepayer Advocate in paragraph 10 of its motion concludes that the Board's non-recurring rates, which are based in part upon connection and disconnection costs, violate "TELRIC principles."[29] As explained in the substantial testimony submitted in the proceeding, the inclusion of cost associated with

[27] Ratepayer Advocate Motion, at 4.

[28] In the Matter of the Board's Review of Unbundled Network Elements Rates, Terms and Conditions of Bell Atlantic-New Jersey, Inc., Docket No. TO00060356, Summary Order of Approval, New Jersey Board of Public Utilities (December 17, 2001) at 14.

[29] Ratepayer Advocate Motion, at 5.

disconnection is a reasonable cost component for non-recurring costs.[30] The Ratepayer Advocate offers no support for the Board to reconsider its prior determination that

> d]isconnection costs are appropriately recovered "up front." The immediate recovery of non-recurring disconnection costs is a standard practice in the telecommunications industry, because
>
> once a service has been disconnected, it is more difficult for an ILEC to recover the costs of the disconnection. This is consistent with the Board's previous determination regarding the recovery of disconnect costs from retail customers.[31]

The Ratepayer Advocate has provided no reasonable basis for the Board to reconsider its prior determination.

11. In paragraph 11 of its motion, the Ratepayer Advocate, without a single citation to record evidence, argues that the Board should "reopen" the record on the appropriate fill rates for copper and fiber feeder.[32] Specifically, the Ratepayer Advocate alleges that it was improper for the Board to establish copper and feeder fill levels based upon the midpoint between actual fill levels and the level at which cable must be relieved.[33] The Ratepayer Advocate simply ignores the Board's finding that "there is no reasonable basis to conclude that, even in a forward-looking cost study, an ILEC could operate its network on an ongoing basis at a fill level that is equal to the point at which facilities need to be replaced."[34] Further, the Board found that the midpoint between actual fill levels and the relief point is "reasonable and reflects an efficient level of capacity for an operating local exchange company required to provision UNEs."[35] Because the Ratepayer Advocate has offered no new evidence that supports its request for the Board to reverse its prior decision regarding the appropriate copper and fiber feeder fill levels, the Ratepayer Advocate's request should be denied.

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[30] Final Order, at 162-163.

[31] Final Order, at 163. Although the Board adopted Verizon's recommendation that disconnection costs be recovered as part of non-recurring charges, it revised Verizon's methodology to include recovery based upon a five year "customer turnover" rather than the 2.5 years recommended by Verizon.

[32] Ratepayer Advocate Motion, at 5.

[33] Verizon NJ's brief in Opposition to AT&T's and WorldCom's Motion for Reconsideration discuses the fill factors in greater detail.

[34] Final Order, at 85.

[35] Id. at 86.

CONCLUSION

For the foregoing reasons, the Ratepayer Advocate's Motion for Reconsideration should be rejected.

Respectfully submitted,

HESSER G. McBRIDE, JR.

BRUCE D. COHEN
Vice President & General Counsel
Verizon New Jersey Inc.
540 Broad Street
Newark, New Jersey 07102

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

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IN THE MATTER OF THE BOARD'S	:	Docket No. TO00060356
REVIEW OF UNBUNDLED NETWORK	:	
ELEMENTS RATES, TERMS AND	:	
CONDITIONS OF BELL ATLANTIC-	:	
NEW JERSEY, INC.	:	
	:	
--X		

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BRIEF ON BEHALF OF VERIZON NEW JERSEY INC. IN RESPONSE TO THE MOTIONS FOR RECONSIDERATION AND CLARIFICATION FILED BY AT&T COMMUNICATION INC. AND WORLDCOM INC.

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This brief is submitted on behalf of Verizon New Jersey Inc. ("Verizon NJ") in response to AT&T Communication Inc.'s ("AT&T") and WorldCom Inc.'s ("WorldCom") April 3, 2002 motions for reconsideration and clarification of the Board Of Public Utilities ("Board") March 6, 2002 Order ("Final Order") in the above captioned matter.[1] For the reasons set forth hereafter, the Board should deny the AT&T and WorldCom motions.

PRELIMINARY STATEMENT

Ignoring the extraordinary unbundled network element ("UNE") rate reductions implemented by the Board in its Final Order -- resulting in many of the lowest UNE rates in the country -- AT&T and WorldCom continue their incessant refrain for even lower rates. Attempting to appeal to the Board's desire to foster local competition, AT&T and WorldCom ignore the legal requirements that UNE rates must be just and reasonable and based upon costs, and simply argue that if the Board once again reduces UNE rates, they will then enter the local residential market "as expeditiously as possible."[2] AT&T's and WorldCom's threat of holding hostage widespread entry into the local residential market until they can dictate what they deem to be "appropriate" rates should be seen for what it is -- an attempt to obtain rates that are so extraordinarily favorable that they can place Verizon at a severe competitive disadvantage -- and should be rejected.

It is no surprise that AT&T and WorldCom would like to dictate the rates that they pay for services that they will use to compete against Verizon NJ. It is inappropriate, however, that AT&T and WorldCom -- whose business strategies focus on using low UNE rates to serve the most profitable business customers -- dangle the carrot of "more residential

[1] On April 3, 2002 the Division of Ratepayer Advocate ("Ratepayer Advocate") also filed a motion for reconsideration. Because many of the arguments raised in the Ratepayer Advocate's letter motion are different from those in the AT&T and WorldCom's motions, Verzion NJ has filed a separate response to the Ratepayer Advocate's motion.

competition" before the Board in an effort to persuade the Board to disregard the legal requirement that UNE rates be based on Verizon NJ's costs. Continuing to lower rates to unlawful levels will neither promote nor encourage residential competition. This is because rates below the legally required, cost-based standard only serve to frustrate true competition, by enabling CLECs to continue to "cream skim" profitable business customers while ignoring residential customers, whom Verizon NJ will continue to serve below cost. Artificially low UNE rates also adversely affect the development of the telecommunications infrastructure, because they dilute all economic incentives for CLECs to invest in New Jersey through the construction of their own facilities. Moreover, such rates deprive Verizon NJ of economic incentive to aggressively invest in its New Jersey infrastructure -- knowing that it will be compelled to make its investment available to CLECs at rate levels that do not cover Verizon NJ's costs.

Significantly, when the Board conducted its examination of the status of local competition in 1998, it specifically found that there was no evidence that UNE rates were an impediment to the development of residential competition.[3] Moreover, experience from other states has shown that the most effective way to spur local competition is to allow ILECs to enter the long distance market.[4]

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[2] AT&T Motion, at 3.

[3] I/M/O Board's Investigation Regarding the Status of Local Exchange Competition, Docket No. TX98010010, Report and Action Plan (N.J.B.P.U. July 1998), pp. 17, 19, 20, 107-108 ("Report and Action Plan"). In that proceeding, Verizon NJ produced evidence that, based on the UNE rates, CLECs could compete profitably providing a suite of services to the typical residential customer.

[4] For example, the FCC has recognized that states with long distance approval show the greatest competitive activity:

- CLEC market share in New York and Texas is over 135% and 45% higher than the national average
- CLECs captured 2.8 million lines in New York, compared to 1.2 million lines the prior year -- an increase of over 130% -- from the time the FCC granted Verizon's long distance application.

CLECs captured 12% of the market in Texas, gaining over half-a-million end user lines in six months since the FCC's approval of SBC's long distance application -- an increase of 60% since June 2000. Federal Communications Commission, News Release, May 21, 2001 ("Latest Data on Local Telephone Competition").

As Commissioner Butler recognized at the Board's November 20 meeting, when discussing the Board's 41% reduction in the UNE-Platform ("UNE-P") rate :

> there will be no more excuses for why people are not engaging in marketing to residential customers specifically. We all know that there is marketing in the business community, but that residential choice is not quite there yet. But this should clear away that remaining obstacle . . . .[5]

These motions -- which include numerous complaints about UNE rates that the CLECS totally ignored during the proceeding -- do not justify the Board's reversal of its prior determinations.

STANDARD OF REVIEW

This Board's rules are clear that a motion for reconsideration "shall state . . . the alleged errors of law or fact relied upon . . . ."[6] Moreover, a party seeking reconsideration has the burden of demonstrating special circumstances, such as material error, which justify reconsideration.[7] The Board will not consider a motion for reconsideration absent a showing that there has been "a new development or new evidence relating to established facts or a material misapprehension by the Board concerning an essential matter which is critical to its final determination."[8]

Also, a court or agency must consider the interests of finality of its decisions, particularly where circumstances have not changed between the initial decision and the request

[5] In the Matter of the Review of Unbundled Network Element Rates Terms and Conditions of Verizon New Jersey Inc., Docket No. TO00060356, Transcript, November 20, 2001, at 38 ("Board Transcript").

[6] I/M/O Petition of MCI Telecommunications Corp., AT&T Communications of New Jersey, Inc., and Sprint Communications Co. for Authorization of IntraLATA Competition and Elimination of IntraLATA Compensation, 94 N.J.A.R.2d (BRC) 93, 94 (N.J.B.R.C. Nov. 8, 1993) (citing N.J.A.C. 14:1-8.6).

[7] See Re GPU Energy, 190 P.U.R.4th 100 (N.J.B.P.U. 1998).

[8] Re Public Service Electric & Gas Co., 1999 WL 33178824, *1, *5, Docket No. EO97070461 (N.J.B.P.U. 1999).

for reconsideration; "if repetitive bites at the apple are allowed, the core will swiftly sour."[9] Where, as here, the moving parties simply disagree with the Board's initial ruling, the request should be denied.[10]

In their requests, AT&T and WorldCom primarily rehash arguments that the Board, based upon record evidence, specifically rejected in its Final Order. Neither party even attempts to demonstrate changed circumstances, new evidence, or that the Board's decision was arbitrary, capricious or unreasonable. For example, AT&T's and WorldCom offer no new justification for the Board to reverse its switch rate design structure decision that appropriately recognizes that switch costs are usage sensitive. Similarly, WorldCom offers no new arguments to support its request that the Board reverse its findings regarding the appropriate fill factors for feeder cable and loop-related electronic equipment. AT&T offers no reason other than its dissatisfaction with the Board's record-based decision to support its request that the Board "reconsider" or "clarify" several of its determinations regarding the provision of Digital Subscriber Line ("DSL") services.

In other instances, AT&T and WorldCom introduce completely new arguments, raising issues that they consciously failed to address during the lengthy and exhaustive proceeding before the Board. For example, for the first time in the proceeding AT&T challenges the cost based rates for Verizon NJ's provision of the daily usage file ("DUF") and service order non-recurring charges for feature changes and directory listings. Despite having had several opportunities to file testimony, conduct cross-examination, and submit legal argument in detailed post-hearing briefs, AT&T and WorldCom remained steadfastly silent on these issues that they

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[9] D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). See also Public Service Electric & Gas Co., 155 P.U.R.4th 503 (N.J.B.P.U. 1994) (in considering whether to grant reconsideration, the Board must avoid promoting unlimited litigation and provide a basis of finality for Board decisions and orders).

[10] See MCI Corp., supra, 94 N.J.A.R.2d at 94.

now allege are "critical" to the development of competition. It is difficult to imagine that sophisticated and experienced CLECs such as AT&T and WorldCom could simply have forgotten to take positions on issues that they now allege are of paramount importance. Instead, after having convinced the Board to drastically reduce UNE rates by over 40% of the cost based rates levels that the Board established in 1997, WorldCom and AT&T are simply seeking unwarranted rate reductions.

DISCUSSION

I. THE SWITCHING RATE STRUCTURE APPROVED BY THE BOARD PROPERLY REFLECTS THE PRINCIPLES OF COST CAUSATION AND COMPLIES WITH TELRIC PRINCIPLES

A. Switching Costs Are Usage Sensitive

The Final Order establishes a switching UNE rate structure rate that properly reflects the principles of cost causation.[11] Consistent with the switch rate design approach adopted by the FCC in its Local Competition Order and in numerous state commission proceedings establishing TELRIC compliant rates, the Board approved a two-tiered switching rate design that includes a flat port rate of $.73 and an end office usage sensitive rate of $.002773 for originating calls and $.002508 for terminating calls.[12] The Board approved switching rates were almost 70% lower than those proposed by Verizon NJ, and were substantially lower than the rates proposed by the Ratepayer Advocate.[13]

The Board, "after carefully considering the rationale underlying WorldCom's argument", specifically rejected WorldCom's recommendation that switching UNE rates should

[11] Final Order, at 127.

[12] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket No. 96-98 (FCC 96-325) (August 8, 1996) (hereafter "Local Competition Order"), at Attachment A, p. 2.

[13] Verizon Initial Brief, Chart A; Ratepayer Advocate Initial Brief, at 74.

be based solely upon a flat rate port charge. Nevertheless, WorldCom requests that the Board reconsider its prior decision and adopt a single flat rate for all end office switching. WorldCom has clearly failed to demonstrate special circumstances or legal error justifying reconsideration. Moreover, WorldCom's request should be rejected because the Board's rate design decision is reasonable, fully supported by the record, and consistent with sound principles of cost causation.

Although WorldCom acknowledges that UNE costs for switching should be recovered by UNE rates that reflect the way in which UNE costs are incurred, it ignores the generally accepted principle that switch costs are usage sensitive. Local switches are designed and engineered to accommodate anticipated usage volumes and traffic patterns.[14] These factors all influence the costs of a switch.[15] Because customers that utilize the switch more often cause the switch to be sized at a greater capacity, it is appropriate that those users that place greater demand on the switch pay, through usage sensitive rates, for the costs caused by the increased demand.

Ignoring the fact that switches in an operating network are sized differently to accommodate the unique traffic patterns anticipated for each switch, WorldCom simply repeats its argument that because Verizon NJ does not purchase switches "on a per minute of use" basis, switch costs incurred by Verizon NJ are unrelated to switch usage. WorldCom Brief, at 9.[16] The Board, however, specifically rejected WorldCom's argument finding that a

> two-tier rate design properly reflects the cost causation associated with unbundled switching. Clearly, there are usage sensitive elements associated with switching, and to provide switching on any other basis would tend to send the wrong economic signals to CLECs and their customers. By accepting the WorldCom

[14] Exh. VNJ-11, at 14.

[15] Exh. VNJ-11, at 14.

[16] See Local Competition Order, at ¶ 622 (costs must be recovered "in a manner that reflects the way that they are incurred").

> proposal, we would be encouraging tariff arbitrage by permitting CLECs to pick and choose the rate design that best suits its individual customer characteristics. This is inconsistent with the average rate design philosophy that guides this Board in virtually all of its retail and wholesale rates, including those set forth in this docket and the two-tier switching rate design in virtually every other state.[17]

Significantly, no other party, including AT&T and the Ratepayer Advocate, recommended that usage rates be based exclusively upon a flat rate port charge. Indeed, AT&T and the Ratepayer Advocate proposed a switching rate structure that included a fixed port charge and a per minute of use charge for end office switching usage.[18] The parties' widespread support for a two-tiered rate structure is not surprising given the fact that a two-tiered rate structure was embraced by the FCC in its Local Competition Order.[19] There, the FCC introduced proxy rates to be used by states on an interim basis -- until state-specific TELRIC rates could be established -- that included a flat rate port charge and a per minute of use charge.[20] Also, in connection with its review of 271 applications, the FCC has found that ILECs providing switching based upon a two-tiered rate structure are operating under TELRIC-compliant rates.[21]

In support of its recommendation that the Board depart from generally accepted switch rate design standards, WorldCom also argues that two other jurisdictions (Wisconsin and Illinois) have established flat rate switch charges.[22] Neither of the decisions provide a compelling reason for the Board to depart from its industry-accepted approach towards switch

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[17] Final Order, at 127.

[18] See Exh. RPA-18, Exh. AT&T-58 .

[19] Local Competition Order, at ¶ 810.

[20] Local Competition Order, at ¶¶ 810-815.

[21] See, e.g., Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, Memorandum Opinion and Order, CC Docket No. 99-295 (FCC 99-404) (December 22, 1999) (hereafter "New York Order"), at ¶ 238; UNE switching rates set forth on the web site of the New York Public Service Commission, www.dps.state.ny.us/UNE_Rates.htm.

[22] WorldCom Motion, at 10.

rate design.[23] In fact, the Wisconsin Commission recognized that it was "going against the traditional rate structure for unbundled switching."[24] Similarly, in the Illinois case cited by WorldCom, the Commission continued to establish usage sensitive charges for certain switched services, recognizing that costs are related to switch activations.[25]

WorldCom also alleges that the generally accepted two-tiered switching rate structure violates TELRIC because it is "discriminatory."[26] First, as discussed above, the FCC has recognized that the two-tiered rate structure does not violate TELRIC, because it has found that companies using that rate structure have complied with TELRIC.[27] Moreover, WorldCom's assertion that the rate structure is discriminatory because it imposes greater costs on those that use the switch more often misses the point.[28] The very purpose of a usage-sensitive rate structure is to impose higher costs on those users that cause the largest demand.

WorldCom also alleges that Verizon NJ has an unfair advantage because it does not have to purchase UNEs on a per minute of use basis. WorldCom's premise is unfounded because, although Verizon does not pay switch vendors on a per minute of use basis for its switching equipment, Verizon does purchase its switch capacity based upon the demand that will be imposed upon each switch.[29]

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[23] See Final Order, at 127 (recognizing that "virtually every state" operates under a two-tiered rate design structure).

[24] Investigation Into Ameritech Wisconsin's Unbundled Network Elements, Docket No. 6720-T1-161 (Wis. PUC 3-22-2002), at 83.

[25] Illinois Commerce Commission On Its Own Motion Investigation Into forward Looking Cost Studies and Rates of Ameritech Illinois for Interconnection, Network Elements, Transport and Termination of Traffic, Docket No. 96-0486 and 96-0569, 1998 Ill. PUL LEXIS 109 (Feb. 17, 1989), at 151-152.

[26] WorldCom Motion, at 12.

[27] New York Order, at ¶ 238; UNE switching rates set forth on the web site of the New York Public Service Commission, www.dps.state.ny.us/UNE_Rates.htm.

[28] WorldCom Motion, at 12.

[29] Exh. VNJ-11, at 14.

WorldCom next challenges the Board's finding that the availability of a flat rate UNE switch cost option would result in arbitrage that would enable CLECs to "pick and chose" the most favorable rate design for individual customers. WorldCom attempts to counter the Board's finding by recommending that CLECs be required to choose to either (1) serve all of their customers through a flat rate, or (2) serve all of their customers using a two-tiered port/usage rate structure. Although requiring a CLEC to serve all of its customers under a single rate structure may reduce some arbitrage, it will continue to send inappropriate economic signals that will result in less competition for residential customers. Allowing CLECs to choose a flat rate only option will provide incentive for CLECs to market primarily to high volume business customers. WorldCom's recommended rate structure would thus have at least two serious adverse effects upon Verizon NJ and competition: (1) Verizon NJ will not fully recover its costs because high volume business customers would be receiving service below Verizon NJ's per unit costs, and (2) residential competition would be frustrated because CLECs operating under the flat rate structure would have no economic incentive to serve residential customers.

The Board should deny WorldCom's request to eliminate usage sensitive charges and should affirm its usage sensitive rate structure because it will send the correct economic signals by imposing costs upon customers in the way switching costs are incurred.

B. The Board's Finding That Vertical Feature Costs Should Be Recovered through Usage Rates Rather Than the Port Rate is Reasonable and Consistent with Generally Accepted Principles of Cost Causation

The Board specifically found that the recovery of vertical service costs through usage charges is consistent with cost causation principles and in the best interest of competition because it will encourage carriers "to evaluate the feasibility of deploying their own switches

. . ."[30] In an effort to convince the Board to reverse its prior findings, AT&T and WorldCom allege that the Board has not set forth in sufficient detail the basis for its determination that vertical service costs are usage sensitive and should be recovered through usage sensitive charges.[31] They also allege that the recovery of vertical services through usage charges "violates TELRIC," which requires that costs be recovered in a manner that "reflects the way that they are incurred,"[32] and that charges for dedicated facilities should be flat-rated, not usage based.[33]

There is, however, no dispute that costs should be recovered based upon the way they are incurred. AT&T's and WorldCom's claims that vertical service costs are not usage sensitive and that Verizon NJ recovers the costs in both usage and port charges does not merit reconsideration and is simply wrong on its merits.

According to AT&T, feature costs are incurred in a similar manner as loop costs in that there is no "incremental" cost for an additional minute of use.[34] AT&T's argument boils down to the illogical assertion that whether or not a cost is usage-sensitive depends on *when* the cost is incurred. Vertical features are properly included in the minute of use ("MOU") rate because this functionality is tied to the switch's processing resources, regardless of when vertical feature costs are incurred. Processing resources are not dedicated -- like a loop -- and instead are shared by all users of the switch. For example, when an end user with "call waiting" is using the line and receives another call, it is the processor that (1) determines that the called party is on the line, (2) checks to see whether the called party has the call waiting feature, (3) sends a "ring"

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[30] Final Order, at 125.

[31] AT&T Motion, at 4-5; WorldCom Motion, at 13.

[32] Local Competition Order, at ¶ 622.

[33] Local Competition Order, at ¶ 744.

[34] AT&T Motion, at 6.

rather than a busy signal to the caller, and (4) sends the call waiting beep to the called party (end user). Each of these activities requires the use of switch processing resources.

AT&T contends that because the switch is port-limited, rather than limited by capacity, vertical features cannot be usage-sensitive.[35] This claim misses the point. A switch's processing resources will be consumed, and ultimately exhausted, by increases in usage. Of course, Verizon NJ attempts to size its switches properly, so that all usage can be accommodated without expansions in switch capacity. The fact that Verizon NJ has sized its switch appropriately and incurs vertical feature and "getting started" costs up front does not mean that the costs are not usage-sensitive; if Verizon had expected lower usage levels, it would have sized its switch differently.[36] Indeed, by AT&T's logic, if Verizon NJ had underestimated its switching needs, such that increased usage required increased capacity, feature-related costs would suddenly become usage-sensitive. (Verizon has in fact replaced switch processors with larger capacity processors.)

AT&T's argument that vertical feature switch costs are not usage sensitive is also inconsistent with its acknowledgment that end-office switching rates are usage sensitive and that it is appropriate to recover such costs through a per minute of use charge. In fact, the rate structure proposed by AT&T's witness called for a two-tiered rate design approach.[37] Vertical feature activations through a switch are similar to end office switching functions; they are both processor based and the capacity to provide the functions of the switch is affected by the extent of the activations. AT&T's attempt to distinguish switch usage involving end office switching

[35] AT&T Motion, at 6-7.

[36] See Exh. VNJ-11 at 14; Exh.VNJ-25 at 7-8.

[37] See Exh. AT&T-47, at 5-6; Exh. AT&T-58, at 19.

and switch usage associated with vertical service features activation is unavailing. Both functions are usage sensitive.

Moreover, because costs associated with features are incurred on a usage-sensitive basis, usage-sensitive recovery is necessary to ensure proper cost-based decision-making.[38] Switch resources that are shared among users, like feature and getting started costs, must be allocated in an economic and reasonable manner among all users according to *how much* of the resource is being used by an end user. AT&T's and WorldCom's recommendation that costs associated with features should be recovered as part of fixed port rates is inconsistent with this principle. As the Board has correctly recognized, putting more of Verizon NJ's switching costs in the fixed port rate would result in low volume residential users subsidizing the high volume business users because the port rate would have to reflect average usage.[39] This approach, moreover, would encourage the inefficient consumption of switch resources, as the Board has also noted.[40]

Finally, if vertical feature costs and getting started investments were moved to the port, as AT&T proposes, the port rate would ***increase*** significantly. The port rate established by the Board is \$0.73, far lower than the rates in New York (\$2.57), where state commission required that costs associated with vertical features be recovered in port rates rather than switch usage rates.[41]

Because AT&T seeks to preserve the extraordinarily low port rate established by the Board, it alleges erroneously that Verizon NJ "already" recovers vertical service costs

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[38] See Final Order, at 125.

[39] Final Order, at 124-25.

[40] Id.

through its port charges.[42] AT&T's argument is inconsistent with the Verizon NJ cost study and supporting documentation.[43] The cost study methodology utilized by Verizon NJ and adopted by the Board to establish switching rates, allocated all of the costs associated with vertical services to usage.[44]

C. The Switch Cost Busy Hour Assumption Adopted By the Board Is Reasonable and Should Not Be Disturbed

Although WorldCom's own cost witness has sponsored switching cost studies utilizing a busy hour assumption comparable to the 251 days relied upon by Verizon NJ and adopted by the Board,[45] WorldCom in its motion for reconsideration renews its argument that the Board should require Verizon NJ to rerun its cost study using a 308-day assumption. WorldCom's argument that the use of business days to calculate switch costs results in an overstatement of per minute of use costs appears to be based upon WorldCom's misunderstanding of the affect and purpose of the busy hour assumption in Verizon NJ's study.

WorldCom incorrectly contends that Verizon NJ's switching costs are overstated because Verizon NJ fails to account for switching traffic on the weekends and holidays.[46] This argument reflects a profound misunderstanding of Verizon's cost studies. Contrary to

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[41] AT&T also urges the Board to compare the usage rates in New York to the New Jersey rates. AT&T's comparison is completely invalid because, among other things, the port rate in New York is over 300% higher than the New Jersey port rate.

[42] AT&T Motion, at 6. The fact that the Verizon NJ port cost does not include any costs associated with features is also supported by a comparison of the New Jersey port rate of $.073 with the port rates in jurisdictions that have authorized the recovery of vertical features in the port rate, e.g., New York ($2.57). Obviously, if the Board were to abandon cost causation principles and determine that vertical service costs should be recovered through the port charge, it would be necessary for Verizon NJ to re-run its switching cost study to reflect the transfer of vertical service costs to the port.

[43] Exh. VNJ-26, Vol. 19, Exh. G-1.

[44] Verizon NJ Reply Brief, at 107-108.

[45] Final Order, at 122.

[46] WorldCom Motion, at 7.

WorldCom's claims, Verizon NJ's cost study properly accounts for usage on weekends and holidays.

Verizon NJ develops switching costs by first sizing the switch to accommodate traffic in the busy hour and then determining the cost for each minute in the busy hour.[47] That investment must be spread over all minutes of use. To derive an estimate of total annual minutes, Verizon first recorded the number of minutes in the busiest hour of five consecutive business days in March 1998, September 1998, November 1998, and March 1999.[48] Verizon then calculated the average usage per-busy-hour based on the 20 busy hours observed, and the average usage per-day based on the 20 days observed, to arrive at a busy-hour-to-day ratio ("BHDR").[49] This ratio represents the proportion of the busy day's traffic that is accounted for by the busy hour. Because the hour in question is, by definition, the busiest of the day, that ratio will fall somewhere above 0.042, or 1/24. This calculation resulted in a BHDR of 0.0747 for New Jersey. Verizon then divided the BHDR by 251 days to determine the busy-hour-to-annual ratio ("BHAR"). In the case of New Jersey, this calculation resulted in a 0.000298 BHAR.[50] Finally, Verizon NJ multiplied the per-busy-hour-minute cost, derived using the SCIS model, by the BHAR to derive the cost per annual minute.[51]

It would be plainly inappropriate to divide the BHDR by 365 to compute the BHAR, as AT&T has suggested in a previous proceeding. That approach would effectively assume that usage on a business day in the busy season represented average usage for every day

[47] Exh. VNJ-26, Vol. 19, Exh. G-1, Sec 1.3.

[48] Exh. VNJ-26, Vol. 19, Exh. G-1, Sec. 4.4.

[49] Id.

[50] Id.

[51] Exh. VNJ-26, Vol 19, Exh. G-1, Sec. 1.3.

of the year – including not only other business days, but weekends and holidays as well. That obviously is not the case.

WorldCom proposes that Verizon should compute its BHAR by dividing the BHDR by 308 – rather than by 251. According to WorldCom, this approach would treat weekend days as half days on the assumption that traffic volumes on weekend days are half those on business days.[52] But WorldCom is incorrectly assuming that *every* business day experiences traffic volumes that are equal to the traffic in a *busy* day, which they obviously are not. As explained above, Verizon's methodology does account for weekend and holiday traffic. WorldCom's proposal, which results in an overstatement of weekend traffic, substantially overstates usage volumes.

Significantly, Verizon NJ's BHAR calculation is generally consistent with AT&T's approach for determining busy hour usage and the method used in other proceedings by WorldCom's cost witness, Dr. Ankum. Specifically, Dr. Ankum acknowledged that in other proceedings, he has recommended a busy hour day assumption that excludes weekends and holidays to calculate per minute of use switching costs.[53] Additionally, WorldCom has sponsored Hatfield Model version 4.0 in numerous UNE cost proceedings. That model uses a 270-day figure to calculate a BHAR, and the documentation to the Hatfield model relies on a 1990 AT&T Capacity Cost Study that uses only *264* days. Obviously, both these numbers are lower than WorldCom's 308-day figure. In fact, using the Hatfield Model's 270 days along with its BHDR of 0.10 results in *higher* switching costs. And if the Hatfield Model's BHDR was

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[52] WorldCom Motion, at 15.

[53] Final Order, at 120-121 (finding that "[i]n addition, we are unconvinced that the circumstances surrounding Mr. Ankum's earlier Texas testimony are sufficiently different from the circumstances here in relation to switch usage patterns, and thus find persuasive Verizon NJ's critique of WorldCom's use of 308 days in this proceeding. Therefore, the Board REJECTS WorldCom's proposal and ADOPTS the Verizon NJ position of 251 days as appropriate.").

divided by 264 days, the derived per-MOU costs would be even higher. Likewise, if the Hatfield Model's 0.10 BHDR were divided by the 308-day figure WorldCom proposes here, the switching costs would again be higher than the Board-approved rates

Verizon NJ recognizes that the Hatfield model does not use the BHDR and BHAR to convert busy hour, busy season costs per minute of use to annual minutes. Instead, the Hatfield Model does the opposite: it takes annual minutes and then uses the BHDR and BHAR ratio to determine if the signaling switch has enough capacity for the busy hour, busy season. But, of course, the relationship is the same whether one begins with annual usage, as the Hatfield Model does, or busy hour usage, as does Verizon NJ.

The Board approved methodology used to develop the busy hour annual ratio is reasonable and results in a proper distribution of switch investments among all minutes of use. Accordingly, WorldCom's argument that the Board should reverse its busy hour determination should be rejected.

D. The Application Of Originating And Terminating Charges To Intra-Switched Calls Is Appropriate

WorldCom's claim that Verizon "improperly" charges both its originating end office switching rate and its terminating end office switching rate for intra-switch calls is without merit.[54] WorldCom's assertion that the Board's estimate of the average charge for UNE-P is "inaccurate" due to the manner in which intra-switched call are charged is equally unfounded.[55]

First, the Board Staff's estimate of the average rate charged for UNE-P, (discussed at the Board's November 20, 2001 meeting) is not affected by the application of originating and terminating charges for intra-switched call. In fact, the Board Staff's estimate of

[54] WorldCom Motion , at 15.

[55] WorldCom Motion, at 15-16.

the average UNE-P rate was based on the assumption that all calls would be subject to both an originating and terminating charge, i.e., the Board Staff's cost estimate assumed 500 minutes of use for both originating and terminating calls.[56] Because the switching cost results from Verizon NJ's Board ordered re-run of its cost studies resulted in switching rates lower than those estimated by the Board Staff, the actual UNE-P average rate is $12.90, rather than the $13.93 rate estimated originally by the Board Staff.[57] Thus, there is no basis for WorldCom's claim that the application of originating and terminating charges to intra-switched calls results in an average UNE-P rate less than that estimated by the Board Staff.

Moreover, applying both originating and terminating local switching charges to intra-switch calls is appropriate because these charges recover completely separate and distinct costs. Every call involves "originating" and "terminating" switching activities, regardless of whether the call is from one end user to another served by the same switch, or between users served by different switches. On the originating end of a call, the switch provides dial tone to the caller, collects the dialed digits from the caller, and routes the call to the called party. On the terminating end, the switch provides ringing to the customer, detects the off-hook from the customer, and connects the terminating customer to the originating customer. Each of these activities requires switch processing, and were costed out separately and divided into separate originating and terminating elements.[58] These activities, moreover, are the same whether or not the call is an inter-switch or intra-switch call.

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[56] Transcript of the Board's November 20, 2001 meeting ("November 20 Transcript"), at 36. Based upon 500 minutes of originating and terminating usage, the Statewide average UNE-P rate is approximately $12.90: (500 x $.002773 originating = $1.39) + (500 x $.002508 terminating = $1.25) + $.73 port + $9.53 statewide average loop = $12.90.

[57] See November 20 Transcript, at 21.

[58] See Exhibit VNJ-26, Verizon NJ, UNE Cost Study, Vol. 19, Exh. G (section 4.2).

While inter-switch calls also involve other costs that are not associated with intra-switch calls, including the costs associated with carriage between one switch and another. But these costs are accounted for by *separate* transport charges that are only applied to inter-switch calls; Verizon NJ does *not* recover these costs in the intra-switch charges at issue here.

As a matter of rate design, Verizon NJ could put all relevant switching costs in either the originating or terminating rate elements, but that rate structure could give rise to distortions. Certain calls do not travel solely on Verizon NJ's network – for example, calls that are passed from Verizon NJ to an inter-exchange carrier ("IXC"), or from an IXC to Verizon NJ. In those cases, Verizon NJ generally will apply only an originating switching charge *or* a terminating switching charge because it is performing only one of those functions. If all switching costs were lumped into either originating or terminating minutes, Verizon NJ would either over-recover or under-recover switching-related costs for calls that travel to or from another network. The Board here correctly adopted Verizon NJ's rate design.[59]

Because the Board has determined that switching costs should be divided between "originating" and "terminating" minutes, and because those costs do *not* vary based on how many switches are involved in a given call, application of "originating" and "terminating" end office switching charges is appropriate for intra-switch calls. As the FCC recently found in the Vermont 271 proceedings, Verizon's method of charging originating and terminating costs for an intra-switched call is TELRIC-compliant.[60]

[59] See Final Order, at 110-11.

[60] See Application by Verizon New England, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc. and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Vermont, CC Docket No. 02-7, Memorandum and Opinion Order, ¶ 32 (2002) (holding that the CLECs presented no evidence that Verizon's method of charging for originating and terminating minutes violates TELRIC principles and noting that Rhode Island and Pennsylvania also charge on this basis).

E. <u>The Board's Determination That The Reciprocal Compensation Rate Be Based Upon The Termination At End Office Cost Should Not Be Disturbed</u>

The Board determined that the reciprocal compensation rate used to compensate a carrier for traffic that is terminated on its network should be based upon the end-office UNE rate.[61] This finding was consistent with the Board's decision in its December 2, 1997 initial UNE Order.[62] Thus, the reciprocal compensation rate is described on the Board's rate schedule as the "Termination at End Office" rate of $.001885. Apparently, WorldCom believes that the Board intended to establish the reciprocal compensation rate based upon the "End Office with Vertical Services" originating and terminating rates. It clearly would have been inappropriate for the Board to establish the reciprocal compensation rate for the termination of traffic based upon a switching rate that includes the costs associated with access to vertical services. The UNE rate that captures end office termination costs is the "Termination At End Office" UNE, not the end office switching with vertical services UNE.[63]

WorldCom's allegation that Verizon should charge the reciprocal compensation rate rather than the end office local switching rate for terminating an inter-switched call is unfounded. WorldCom bases its argument on the incorrect assumption that the termination of a local switched call should not include costs for access to vertical services. However, because vertical service costs are associated with terminating CLEC local calls, it is reasonable that such

[61] Final Order, at 252

[62] <u>In the Matter of The Investigation Regarding Local Exchange Competition For Telecommunications Services</u>, Docket No. TX 95120631, December 2, 1997 ("December 1997 Order"), Attachment 1 at 2.

[63] The Board's December 2, 1997 UNE decision further supports the conclusion that the reciprocal compensation rate is the Termination at End Office UNE. The rate schedule adopted by the Board in December 1997 specifically contains a section identifying "Reciprocal Compensation", which describes the rate as the "Termination at End Office" rate. <u>See</u> December 1997 Order, Attachment A at 2.

costs be recovered through the end office local switching charge. WorldCom has presented no basis for reconsidering this conclusion.

Notwithstanding the foregoing, Verizon NJ has agreed to charge an unbundled local switching transport fee ($0.001888) -- which is a weighted average of the rate for Unbundled Local Switching Terminating (with vertical features) ($.002508) and Transport and Termination (without features) ($.0018885) -- to all minutes of use where the unbundled local switching terminating charge applies for terminating a call from an IXC to a CLEC UNE-P end user.[64]

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[64] See Re Application by Verizon NJ for Authorization to Provide In-Region, InterLATA Services in State of New Jersey, Docket No. 01-347, New Jersey Terminating Access UNE Usage Rate Application 03/08/2002, attached to Ex Parte filing , dated March 11, 2002, to the FCC from Clint E. Odom of Verizon Communications.

II. WORLDCOM'S ARGUMENTS REGARDING THE BOARD'S FILL FACTORS FAIL TO SATISFY THE STANDARD FOR RECONSIDERATION, AND ARE SUBSTANTIVELY INCORRECT

With respect to the Board's fill factor determinations, WorldCom has manifestly failed to carry its burden to demonstrate special circumstances, such as material error, that would justify reconsideration.[65] Similarly, WorldCom has not even attempted to present what the law requires as a minimum for even raising the issue: "a new development or new evidence relating to established facts or a material misapprehension by the Board concerning an essential matter which is critical to its final determination."[66] Even a cursory review makes clear that WorldCom's "motion for reconsideration" of the fill factors is no more than a simple "reargument" of positions clearly, and properly, rejected. Its motion should be rejected on this ground alone.

On the merits, WorldCom's positions regarding fill factors were, and continue to be, completely results-oriented and unsupported. The Board in fact noted that WorldCom's recommended revised fill levels were "based on the testimony of <u>its economist</u> August Ankum,"[67] while the fill factor assumptions in Verizon NJ's cost study were "based primarily upon the judgment, expertise and experience of Verizon NJ's engineers that have been, are, and will continue to be, responsible for the provision of service throughout New Jersey."[68]

The procedural and substantive flaws of WorldCom's positions regarding copper distribution, copper feeder, and loop electronics fill factors are set forth below.

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[65] <u>See</u> <u>Re GPU Energy</u>, 190 P.U.R.4th 100 (N.J.B.P.U. 1998).

[66] <u>See</u> <u>Re Public Service Electric and Gas Co.</u>, 1999 WL 331178824, *1, *5, Docket No. EO97070461 (N.J.B.P.U. 1999).

[67] Final Order, at 74 (emphasis added).

[68] Final Order, at 73 (citing Verizon NJ Initial Brief, at 86).

A. WorldCom Presents No Cognizable Basis On Which To Reconsider The Copper Distribution Fill Determination, In Which The Board Rejected Both Verizon NJ's And AT&T's Proposals And Adopted That Of The Ratepayer Advocate

With regard to copper distribution fill, WorldCom's categorical, simplistic, and flawed contention that "consideration of . . . existing or embedded fills is prohibited" under TELRIC costing principles[69] has already been considered, and rejected, by the Board.[70]

Moreover, WorldCom's "strawman" argument is factually incorrect. Far from "basing" its distribution fill factor on Verizon NJ's embedded network, which WorldCom insists is "prohibited" by the FCC, the Board in fact rejected Verizon NJ's position, revising the "forward-looking fill level [of 40%] proposed by VNJ . . . upwards to 53% based on the recommendations of" the RPA:

> [It] is our belief that Verizon NJ's use of a 40% distribution fill factor is the product of an embedded design that is at least partially the result of an inefficient rate base, rate of return environment.[71]

WorldCom has not only ignored the Board's rejection of Verizon NJ's proposed fill factor, but also ignored the fact that AT&T proposed an effective fill level of approximately 48%, which was also rejected.[72] The Board in fact made specific findings that ensured its distribution fill factor was not based on Verizon NJ's embedded network. Specifically, the Board rejected Verizon NJ's use of ultimate design criteria in modeling forward-looking distribution plant, based on its view that innovations like line splitting and line sharing will reduce the need for additional lines and increase fill.[73] While Verizon NJ does not believe that the Board's decision

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[69] WorldCom Motion, at 4.

[70] See Final Order, at 74 (citing WorldCom's argument that basing fill factors on Verizon NJ's embedded network was "in violation of 'FCC sanctioned TELRIC cost principles'").

[71] Final Order, at 84.

[72] See Final Order, at 79.

[73] Id. at 84.

to increase the fill factor on that basis was correct, WorldCom's reargument of its position in favor of a still higher fill factor is no basis for reconsideration of the Order.

WorldCom also improperly suggests that the Board's sole basis for its distribution fill factor was the fact that it "compares more favorably" to the actual average number of lines per living unit than Verizon NJ's proposal, and that the Board should therefore have chosen WorldCom's higher proposal.[74] Again, this is nothing more than reargument of a position already asserted and rejected,[75] and should be rejected on that basis.[76] And, once again, WorldCom's "strawman" premise is incorrect: the fact that the result of its decision compared "more favorably" to actual fills than did Verizon NJ's proposal was cited by the Board in the nature of a "check" on its decision, rather than as its basis.

B. WorldCom's Restatement Of Its Positions Regarding Copper Feeder Fill Do Not Warrant Reconsideration

WorldCom has also reiterated its argument, already soundly rejected by the Board, that any consideration of embedded fill levels in determining the copper feeder fill factor "does not comply with TELRIC principles."[77] For the reasons stated above, WorldCom has manifestly failed to satisfy the standard governing consideration of a motion to compel.

In addition, WorldCom's claim that Verizon's proposal is "based on embedded and actual fill"[78] is misleading at best, and completely incorrect at worst. Verizon NJ was clear that its proposal was based on actual fill plus estimated growth.[79] The Board recognized this

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[74] WorldCom Motion, at 5.

[75] Final Order, at 79.

[76] WorldCom's reliance on the fill factors adopted by the FCC and the Michigan Public Service Commission, and its insistence that use of a lower distribution fill factor would discriminate against CLECs (WorldCom Motion at 5-6) have also been expressly considered and rejected by the Board. See Final Order at 79, 84-85.

[77] See Final Order, at 81; WorldCom Motion, at 6.

[78] WorldCom Motion, at 6.

[79] Verizon NJ Initial Brief, at 94.

distinction, pointing out that the "feeder distribution levels proposed by Verizon NJ are not the embedded or actual feeder fill levels in its existing network," but are instead the forward-looking "mid-point between the actual fill levels and the level at which the facility would be required to be relieved under Verizon NJ's engineering guidelines."[80] WorldCom completely ignores the actual basis of the Board's decision, which focused on the fact that "the feeder fill level in a cost study must reflect the statewide average fill level for all feeder cable in the network on a forward-looking basis," and that "the statewide average must have sufficient capacity within the individual routes that make up the average . . . to respond to widespread changes in demand, including the uncertainty of where and when growth will occur."[81]

Thus, the Board clearly established a rational relationship between its copper feeder fill factor and the requirements of an efficient, forward-looking network.[82] WorldCom's reliance on District Court Judge Hayden's decision for the proposition that the Board has relied on Verizon's past practices "without regard to a forward-looking least cost efficient network" (WorldCom Motion at 7) is wholly misplaced and misleading. In the portion of that decision cited by WorldCom, Judge Hayden criticized the Board's adoption of a 30% distribution fill factor "historically used" by Verizon NJ, without addressing other parties' arguments that the forward-looking factor should be lower.[83] Here, to the contrary, the Board has neither adopted an historic fill factor, nor failed to establish a rational relationship between its copper feeder fill factor and the requirements of an efficient, forward-looking network. WorldCom's motion for "reconsideration" on this ground is baseless.

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[80] Final Order, at 85 (emphasis added).

[81] Id.

[82] Id. (expressly rejecting the CLECs' "unrealistic assumption" regarding growth and changes for feeder routes in the future, and the flexibility needed "to address volatility and demand throughout the network").

Finally, WorldCom's reliance on the assertion that future growth will be accommodated with DLC, not new copper fiber[84] is again no more than reargument of a position already properly rejected.[85] Substantively, the Board recognized that WorldCom's position was a non-sequitur reflecting a misunderstanding of cost concepts, and rejected it out of hand:

> [t]he fact that there may be fewer copper feeder facilities in a forward-looking network does not mean that those facilities can effectively operate at higher levels of fill. There is simply no logical basis to conclude that the average fill level necessary to operate and maintain copper feeder should increase because there are fewer copper facilities throughout the network.[86]

WorldCom has not suggested, and cannot suggest, that the Board's conclusion reflects a "material misapprehension" concerning an essential matter "critical to its final determination." Indeed, WorldCom has not even attempted to explain why the Board's conclusion may have been incorrect, and its motion for reconsideration on this point is, wholly without merit.

C. Loop Electronics Fill Factor

WorldCom's arguments seeking reconsideration of the loop electronics fill factor are expressly based on reargument of positions set forth in its initial brief,[87] and should be rejected solely on that basis. Moreover, for the reasons discussed above with respect to the fill factor for copper feeder, and as clearly explained in its Order, the loop electronics fill factors adopted by the Board are "not the embedded utilization levels," but are in fact "the mid-point between existing utilization levels and the point at which facilities would have to be relieved."[88]

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[83] AT&T Communications of New Jersey, Inc. v. Bell Atlantic-New Jersey, Inc., Civ. No. 97-5762, Slip Opinion (D.N.J. June 2, 2000) (KSH), at 34.

[84] WorldCom Motion at 7.

[85] See Final Order, at 85-86.

[86] Id.

[87] WorldCom Motion, at 8.

[88] See Final Order at 87; Verizon NJ Reply Brief, at 91.

As discussed above, WorldCom's insistence that the Board's approach is inconsistent with TELRIC is unsupported, and incorrect. As also discussed above, the Board's Order, which clearly explained why Verizon NJ's recommended fills were appropriately forward-looking while the CLECs' recommendations were contrary to sound engineering principles and completely unreasonable,[89] was entirely consistent with Judge Hayden's directive. WorldCom's unsupported assertions to the contrary are simply wrong. In particular, the Board clearly and correctly pointed out that "there is no reasonable basis to conclude that an operating company could operate, on average, all of its electronic facilities at or close to engineering relief points."[90] WorldCom's insistence on arguing its position is an inappropriate basis for "reconsideration," and is incorrect as a matter of fact and law.

[89] Final Order at 87.

[90] Id.

III. AT&T'S ARGUMENTS WITH RESPECT TO NON-RECURRING CHARGES ARE FALLACIOUS

A. The Hotcut Rates Ordered By The Board Are Fully Consistent With The Board's Forward-Looking Network

1. Factual Background

On March 20, 2002, Verizon NJ introduced a two-year promotional offering that significantly reduces the non-recurring hotcut rates that had been adopted by the Board and confirmed in its Final Order of March 6, 2002. See letter from Bruce D. Cohen to Kristi Izzo, Secretary, Board of Public Utilities and attached rate list. CLECs are being charged $35.00 for both initial and additional two-wire loop hotcuts, instead of the Board-approved rates of $159.76 and $73.01, respectively. Verizon NJ also reduced to $35.00 its non-recurring hotcut rates for initial and additional lines for the following other elements: Four Wire Loop Hot Cut; ADSL/HDSL Loop Hot Cut; DDS/56KD Loop Hot Cut; IDLC to Copper Loop Hot Cut; and Line Port Hot Cut. Id. Verizon NJ's offer to make available a reduced hot cut rate is generally consistent with the terms of an agreement between Verizon and other parties in New York reached as a part of a comprehensive settlement of UNE and retail rate issues. Thus, the voluntary rate reductions implemented in New Jersey will remain in place until either the sooner of two years or the Board's final resolution of the AT&T motion, unless the Board otherwise modifies the rate. Id.

Verizon NJ's current non-recurring hotcut rates are plainly well below the non-recurring hotcut costs recently determined by both the Board and the New York Public Service Commission. The New Jersey Board determined that the non-recurring cost for provisioning a two-wire initial hot cut is $159.76, while the New York Public Service Commission determined that the cost for that element is $185.19.

2. AT&T's "Melding" Argument Is Misplaced

AT&T argues not only that the Board was wrong in calculating $159.76 for the two-wire initial hotcut (and in making such calculations for related elements), but that it is wrong to maintain even $35.00 as an overall hotcut rate. AT&T claims that the hotcut rates approved by the Board "reflect a 100 percent copper loop assumption, in direct contravention of the [Board's] determinations." AT&T Motion, ¶¶ 29, 44-47. But AT&T's analysis fails to reflect the recognition that hotcuts from IDLC loop carrier (cost elements five and six)[91] and hotcuts from non-IDLC loop carrier (cost elements three and four) comprise <u>different</u> UNE/Service Descriptions, and are accordingly subject to different nonrecurring charges. Any "weighted average" of IDLC hotcuts and copper hotcuts is <u>entirely</u> <u>inappropriate</u>, particularly given the Board's emphatic adoption of the Verizon NRCM over the AT&T NRCM, which examined only 50 rate elements, as opposed to Verizon NJ's 170 rate elements. Final Order, at 157-59. Adoption of AT&T's argument would not entail only acceptance of the AT&T hotcut work times and occurrence factors that were previously rejected by the Board, but reversal of the fundamental rate element structure selected by the Board in favor of one that the Board has already deemed inadequate.

Simple arithmetic shows AT&T's "weighted average" argument for the pretense that it is. Even if the Board were to believe AT&T's story that a hotcut from IDLC is virtually cost free, and therefore that 60 percent of the hotcuts that Verizon NJ performs will cost only 54 cents, the resulting melded hotcut rate would nonetheless be significantly <u>higher</u> than the $35.00 rate currently being charged by Verizon NJ. The Board previously determined the two wire hotcut initial rate (cost element three) to be $159.76. If it is assumed that 60 percent of those hotcuts

[91] Verizon NJ's cost elements five and six cover IDLC to copper hotcuts, not the IDLC to IDLC hotcuts that AT&T wrongly assumes are technically feasible.

only cost $.54, and the hotcut rate is accordingly slashed by nearly 60 percent, the resultant rate is $64.22 -- plainly much higher than the $35.00 Verizon NJ charges CLECs.

3. AT&T Erroneously Assumes That A Hotcut From IDLC Loop Carrier Is Cost Free

Contrary to AT&T's arguments in its Motion, Verizon NJ's NRCM demonstrates that hotcuts from IDLC cost more than hotcuts from copper. When an end user served by IDLC changes its carrier to a CLEC, Verizon NJ must (in addition to taking the basic work steps necessary to perform any hotcut) convert the loop in question either to copper or UDLC. Such a conversion is necessary because only copper or UDLC can be unbundled and offered to the CLEC as a standalone loop. Notwithstanding AT&T's arithmetic, the fact remains that standalone loops served over IDLC cannot be unbundled and connected to the CLEC collocation. AT&T's absurd 54 cent non-recurring cost for IDLC hotcuts fails to account for any of the costs entailed in a procedure that is essential in order for the conversion to work.

AT&T's hope of near free hotcuts rests on its unsupported speculation that IDLC will some day be unbundled as a standalone loop. But the record is clear that such a procedure will not be possible in the foreseeable future. IDLC unbundling would require the creation of a separate GR-303 interface group from an individual remote terminal ("RT") to a specific CLEC collocation, which is not technically feasible today and is not expected to be technically feasible in the foreseeable future. The testimony in this case was replete with evidence from Verizon NJ witness Albert that available digital loop carrier technology does not support multi-LEC operation. See Exh. VNJ-11, at 1-7 (Albert); Tr. 12/18/00, at 1041-49, 1063-64, 1085-97. The enormous problems of (1) partitioning GR-303 technology to allow control by multiple LECs; (2) devising an automated administration system to govern interactions among LECs owning connected switches; and (3) protecting against the network dangers that will inevitably arise from different carriers' use of distinct testing methodologies within a single GR-303 interface group have not been solved. Technologies will have to be developed to remove all these problems before GR-303 based systems can become technically feasible in a multi-LEC environment.

Until that day, the seamless hotcut that AT&T wants to persuade the Board is a reality will remain fantasy. Predictably, no party purveying the GR-303 "solution" has to this date been able to point to any carrier anywhere that has put such technology to use in UNE environment. The simple fact -- which AT&T repeatedly dodges -- is that the type of technology that would be required to realize AT&T's hotcut fantasy is not available. That does not mean that there is a procedure that has been developed that is difficult, burdensome or economically unsound to execute. It means that there is no way to do it. The FCC has made it clear that fantasy technology has no place in the assumptions underlying TELRIC UNE rates. See, e.g., 47 C.F.R. §51.505(b)(1) (TELRIC cost studies must be based on "the most efficient telecommunications technology currently available"); Local Competition Order, at ¶ 685 (TELRIC prices should be "based on the most efficient technology deployed in the incumbent LEC's current wire center locations").

4. The Hotcut Rates Ordered By The Board Do Not Reflect Embedded Costs

(a) Verizon NJ Does Not Double-Recover Disconnect Charges

AT&T claims that Verizon is double-recovering disconnection charges. See AT&T Motion, at 12-13 (¶¶ 30-31). That is not the case. While Verizon NJ in fact collects disconnection costs from a retail customer at the time that the retail customer initiates service, when that same retail customer changes carriers, the "connect" costs associated with the hotcut include only the costs above and beyond those associated with the simple disconnection of the customer to Verizon NJ.[92] Together, the hotcut "connect" cost and the retail "disconnect" cost account for the total cost associated with changing carriers from Verizon NJ to a CLEC. The two categories do not overlap.

The "connect" operations are set forth in the Verizon NJ NRCM at RCMAC Task No. 3 ("release translation change, under direction of the RCCC, into MARCH to effect number portability when required with a Hotcut") and at CO Frame Task No. 10 ("On due date at frame due time, work under direction of RCCC and cut-off/cut-in wire at reuse facility. Perform multi-line hotcuts one line at a time (provide per line time average). Test to insure dial tone leaves central office ok. (Hotcut)").

There are no "disconnect" charges associated with these operations. By contrast, the "disconnect" charge that is applied when Verizon NJ first provides service to a retail customer covers the disconnection and removal of the main distribution frame jumper between the Verizon NJ cable pair and Verizon NJ's office equipment and the cost of removing certain translations from the switch. Neither of these tasks is included in Verizon NJ's NRCM. The "connect" costs associated with a hotcut do <u>not</u> include those expenses, even though these activities <u>must be performed</u> at some point. These costs, rather, are recovered through the retail customer's payment of disconnection charges at the time service is first established.

[92] Verizon NJ's NRCM accounts for the costs associated with both connecting and (at the end of the UNE life) disconnecting the UNE. The latter cost is reduced to the "present value" of the forward-looking disconnection charge. Pursuant to the Board's Final Order, the expected UNE life used to determine the present value of disconnection costs is five years.

(b) AT&T's Contentions That Verizon NJ's Work Tasks Reflect Embedded Inefficiencies Are Merely Reiterations Of Arguments That Have Been Rejected By The Board

AT&T uses its Motion to trot out, virtually without change, the same arguments it presented in its Initial Testimony and its Rebuttal Testimony to the effect that Verizon NJ's hotcut rates reflect inefficient practices.

The Board has flatly rejected these arguments. Indeed, apart from certain specifically defined modifications, primarily with respect to the recovery of costs for additional lines, the Board found that the methodology employed by Verizon NJ is "sound, in that it makes reasonable estimates of the time currently taken for each work activity." Final Order, at 162. Indeed, the Board found that times associated with "contacting CLEC, verifying service orders obtaining CLEC approval, completing orders, and notifying team of cancellations" should be eliminated for all additional lines "in recognition that the tasks for the initial and additional lines will be performed within the allotted time for the initial line." Id., at 163 (emphasis added). Thus, the Board found clearly that the activities outlined by Verizon NJ as well as the estimated times and occurrences factors, were reasonable with respect to initial hotcuts.

The hotcut process employed by Verizon NJ has received ISO 9000 certification from the International Organization of Standardization in December, 2000; this process was recertified in May, 2001 and November, 2001. See Verizon Supplemental Declaration of Patrick A. Garzillo and Marsha S. Prosini, submitted by Verizon NJ to the FCC with § 271 application on March 26, 2002 ("Garzillo/Prosini"), at ¶10. Before granting this certification, the ISO 9000 certification team reviewed all Verizon centers responsible for processing hotcut requests in both New Jersey and New York, and found that these hotcut processes: (1) were fully documented and universally followed across all centers in the states; (2) used process metrics to identify non-conformances; (3) were fully understood by all process workers, who had the ability to identify non-conformances and suggest process improvement, and who conducted regular route-cause analysis; and (4) used process improvement methodologies to act on findings resulting from these root cause analyses. See id.

The processes employed by Verizon NJ for hotcuts are not only necessary, but reflect the very steps the CLECs have asked Verizon to perform. See Exh. VNJ-9, at 18-19 (Meacham). These steps are designed to protect the end user by insuring that the CLEC has correctly completed the tasks that it must perform in order to proceed to provide service to its customer. Without these steps, as AT&T and every other CLEC knows, end use customers would experience service interruptions.

AT&T's specific criticisms of the Board-ordered non-recurring rates not only retread arguments that have already been properly rejected, but reflect fundamental confusions. Thus, in paragraph 36 of its Motion, AT&T mixes up hotcuts with UNE platform migrations. AT&T claims that the Board's Summary Order conflicts with its Final Order because the Summary Order states that Verizon NJ must "[e]liminate all field installation charges associated with Migration order," and the Final Order, at 161, rejects "all field installation charges for UNE-P." But there is no discrepancy, and it is AT&T, not the Board, that is confused. A migration is a change in UNE-P service providers. "Hotcut" is a broader term, embracing, for instance, any loop conversion from one carrier to another. Field installation costs must be charged to a CLEC whenever existing ILEC service is on IDLC.

In paragraphs 37-38, AT&T urges the Board to reverse itself and declare -- contrary to the findings of the International Organization of Standardization that certified the Verizon NJ hotcut process -- that Verizon NJ's procedure for providing dial tone is "entirely unnecessary." AT&T is wrong. Verizon NJ coordinates dial tone in a hotcut in order to insure that the end user will not be deprived of service for any amount of time for any reason. Verizon NJ must contact the CLEC with respect to dial tone coordination in order to determine whether the CLEC's end user (or the CLEC) has made any date, time or other changes, and to insure, via phone call, that the CLEC is presently prepared to complete the hotcut and to obtain final authorization to proceed. These tasks are not only necessary, but were requested by the CLECs in collaborative hotcut meetings. See Garzillo/Prosini, supra, at ¶22; Exh. VNJ-9, at 18-19 (Meacham).

In paragraphs 39-43 of its Motion, AT&T claims that various manual processes, such as phone calls, undertaken for the purpose of communication between work groups, are unnecessary. The International Organization of Standardization does not agree. See Garzillo/Prosini, supra, at ¶10. Nor does AT&T appear to recognize that the assurance of quality control and the prevention of service disruption necessarily involves double-checking, especially where the particular elements of a transfer, such as the precise time that is convenient to the end user, are subject to change, and the number of parties involved in providing information (end user, CLEC and Verizon NJ) multiply the possibilities of error in the initial communication.

The above tasks are required by CLECs. CLECs require a verification phone call four days before the due date so that the order may be reviewed with the CLEC representative. The CLEC has to be informed of the facility type being used for the order in order to program CLEC dial tone correctly. CLECs invariably require the name and telephone number of the RCCC technician working the order. Moreover, technician time and activity is required if, during the provisioning process, no CLEC dial tone is present; in that event, the technician must call the CLEC to inform it of the problem. The CLEC may require multiple retests and checks until dial tone is available at its switch facility. Such additional time and expenses are caused by CLEC-based facility problems. Moreover, CLECs require a last minute call from the RCCC before completing a hotcut loop. The RCCC must coordinate this call, as well as the subsequent activity in order to complete the order. Exh. VNJ-9, at 20-22 (Meacham).

5. Summary

In sum, the criticisms AT&T has advanced in its Motion regarding the Board's approval hot cut rate should be dismissed. In trying to sell its five dollar hotcut, AT&T utilizes the very NRCM -- its own -- that the Board rejected. Its proposal to "meld" copper hotcut rates with fantasy IDLC hotcut rates of 54 cents per connection, even if accepted by the Board, would still result in rates <u>almost</u> <u>double</u> what Verizon NJ is presently charging CLECs. Its specific criticisms concerning the supposed "inefficiencies" in the hotcut process are fallacious, ignoring not only the International Organization of Standardization's recommendations, but also its own requests to Verizon NJ. Finally, and most importantly, adoption of AT&T's recommendations for "efficiency" would put its own end user customers in danger from the standpoint of service quality. Should service interruption occur in the hotcut process, there is no doubt but that AT&T would blame Verizon NJ and seek compensation from it. AT&T is unwilling, however, to pay for the necessary steps that are in place solely to insure that such interruption does not occur.

B. Verizon NJ's Non-Recurring Costs For Service Orders For Feature Changes Are Proper

AT&T claims that the Board-approved non-recurring service order rate of $7.71[93] should in fact be $0.83, which is the service order rate applicable to UNE platforms. <u>See</u> AT&T Motion at 52-56. As is the case with other issues raised by AT&T, this meritless contention arises for the first time, in the motion for reconsideration.

Contrary to AT&T's contentions, the Board-approved rate for subsequent feature changes is entirely appropriate. There are numerous kinds of CLEC errors that can cause an order to "fall

[93] The comparable non-recurring rate for feature change service orders approved by the New York PSC is $9.01.

out" of Verizon NJ's mechanized systems, requiring manual handling in the National Market Center (formerly the "TISOC"). For example, a CLEC may ask Verizon NJ to remove a feature that is not actually in place on a given account, or to install a feature on an account where that feature already exists. If this occurs, Verizon NJ will incur costs to handle the order manually. Verizon NJ may also be required to perform manual activity if a request to remove a feature falls out of Verizon NJ's mechanized system.

AT&T compares service orders for subsequent feature changes to a CLEC's request for UNE-P service, which is subject to a $0.83 service order charge. The comparison is inappropriate, because the UNEs are different. Moreover, Verizon's cost studies do not assume that every service order for a subsequent feature change will require manual handling, or that the time required to perform those orders that do require manual work will be the same in the forward-looking environment. In fact, Verizon's studies reduced the time Verizon has estimated for this activity from 95 minutes down to 12.47 minutes, spread across all orders, by applying typical occurrence and forward-looking adjustment factors.

Indeed, the New Jersey service order non-recurring charge for subsequent feature changes ($7.71) is *lower* than the charge for that UNE recently approved in New York. The New York PSC approved forward-looking time estimates that are identical to those approved in New Jersey (a total of 12.47 minutes). These times resulted in a $9.01 approved non-recurring charge in New York (reflecting higher labor costs in New York and different approved loadings). *See* Order on Unbundled Network Element Rates, *Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements*, Appx. C (NY PSC January 28, 2002).

IV. AT&T'S NEWLY-DISCOVERED CHALLENGE TO THE DAILY USAGE FILE RATE IS BASED ON A MISUNDERSTANDING OF THE COST ELEMENTS UNDERLYING THAT RATE AND INAPPROPRIATE COMPARISONS WITH OUTDATED DUF RATES IN OTHER JURISDICTIONS

AT&T's motion for "reconsideration" of daily usage file ("DUF") rates is based on a flawed understanding of the costs underlying those rates. AT&T's information gap is perhaps understandable, since it pursued absolutely no discovery or cross-examination whatsoever on this subject at any point in the case. Verizon NJ's approach to determining DUF costs and rates were clearly reflected in its cost studies and AT&T was fully capable of investigating this issue at any time.[94] AT&T not only failed to do so, but also failed to mention this issue in its voluminous briefs. Thus, the DUF rates and underlying cost approach approved in the Board's Order were, in fact, unrebutted, indeed utterly unchallenged, in the record, and AT&T's request for "reconsideration" at this late date should be rejected out of hand.

Indeed, even in its eleventh-hour motion AT&T makes no attempt whatsoever to undermine or even challenge Verizon NJ's DUF cost study. Rather, the sole basis of its request that the Board reconsider its decision is a set of scattershot references to statements and rates in other jurisdictions. Although Verizon NJ addresses the merits of AT&T's positions below, it is significant that AT&T can point to absolutely no basis in the record upon which the Board might alter its decision with respect to DUF rates.

DUF is an optional service that resellers and UNE customers may choose to assist them in preparing billing records. The DUF service provides files containing records of IntraLATA local and toll usage information to CLECs for detailed billing of services to the end

[94] See Exh. VNJ- 26, Verizon NJ, UNE Cost Study, Vol. 30, Exh. K ("DUF Cost Study").

user.[95] These customers use DUF as an alternative to the monthly billing outputs to provide call detail to their customers.

Verizon requires substantial staff to support the DUF product, and to satisfy contractual and regulatory obligations for quality and timeliness for which DUF is measured. These employees are responsible for responding to CLECs' billing- and usage-related questions, requests, and complaints, including those regarding technical issues, requests for retransmission of billing information, requests for recreation of tapes containing billing information, and questions regarding usage. They must also investigate and correct errors and create the physical tape files on which DUF records are often distributed.[96] Finally, Verizon personnel must address requests for changes in distribution type or medium, requests for changes to current business policy and practices, requests for Verizon documentation, requests for Exchange Message Interface information related to DUF files, and other customer concerns. These activities take time, and Verizon NJ must have employees to perform them. It is, of course, entitled to recover these related labor costs.

In its motion for reconsideration, AT&T takes statements made by Verizon in other proceedings out of context, and makes inappropriate comparisons with rates filed in other jurisdictions. It may be true, for example, that DUF rates "reflect the costs of the computer hardware and software required to create the usage information by carrier, and then transmit it to the carrier."[97] It may also be true that computer costs have declined since 1997. But, as both the FCC and the United States Court of Appeals for the D.C. Circuit have recognized, although

[95] Exh. VNJ-26, DUF Cost Study, Section 1.1.

[96] See DUF Cost Study, Section 1.2.

[97] AT&T Motion, at 19 (citing Application of Verizon New England for Authorization to Provide In-Region, InterLATA Services in Vermont, CC Docket 02-7, Verizon Ex Parte Letter to W. Caton from R. Ellis, dated March 18, 2002, at 5).

"'rates may often need adjustment to reflect newly discovered information,'" permitting continuous reconsideration based on "new information" of rates that have been duly established is a recipe for administrative paralysis "'in this context of rapid regulatory and technological change.'"[98]

Moreover, as indicated above, and as AT&T could have easily learned had it pursued any discovery whatsoever, computer costs are only part of the DUF rate; Verizon devotes substantial human resources to handle DUF-related questions and problems throughout its footprint, and the substantial labor costs must also be recovered in these rates. In this connection, it is important to recognize that AT&T's reliance on Verizon's statement that DUF rates proposed in New York and Massachusetts were lower than in the past due to declining labor inputs (AT&T Motion, at 19) is misplaced. While the DUF-related processes described above have been becoming more mechanized in the former Bell Atlantic North region, many of those steps had already been taken in the former Bell Atlantic South region that includes New Jersey, Pennsylvania, and Maryland.

Simply stated, the DUF rates approved by the Board are unrebutted in the record, and are TELRIC-compliant. The DUF rate adopted by the Board is based upon Verizon NJ's cost analysis, which captures the forward-looking costs of providing carriers access to daily usage information. Verizon NJ developed its DUF rates by examining the forward-looking computer processing time and labor costs associated with preparing and formatting the DUF record, transmitting the data to the CLECs, and resolving any questions or problems that might arise.

[98] See Rhode Island Order ¶ 31 (quoting AT&T Corp. v. FCC, 220 F.3d 607, 617-18 (D.C. Cir. 2000)).

Notwithstanding AT&T's misleading comparisons, Verizon NJ's DUF rates are comparable with the DUF rates Verizon recently proposed in cost proceedings in Pennsylvania.[99] A comparison of the New Jersey rates with those proposed rates is set forth below:

Rates	NJ BPU Ordered	PA Proposed
Network Data Mover	0.000295[100]	0.0001520
Message Recording	0.00150	0.001530
Total	0.001795	0.001682

Verizon NJ's current DUF rates in Pennsylvania, which are cited by AT&T (AT&T Motion, at 20), are based on an outdated cost study that, among other things, significantly overstated the demand for DUF service. The rates listed above for New Jersey and Pennsylvania reflect updated demand information properly based on actual experience and demand volumes. The studies for Pennsylvania were performed subsequent to the New Jersey study using updated inputs and assumptions. Finally, it should also be noted that the FCC recently approved the application of Verizon New England to provide in-region, interLATA services in Vermont, and the DUF rate for Vermont is approximately double the Board approved rate in New Jersey.[101]

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[99] Generic Investigation Re: Verizon Pennsylvania Inc.'s Unbundled Network Element Rates, Docket No. R-00016683, Part A-1: Summary of Recurring Cost Results, Exhibit Part F-3.

[100] AT&T has pointed out in another context, and Verizon NJ has acknowledged, that Verizon NJ's cost study contains an error that impacts the network data mover DUF element, and that would result in a reduction in the rate for that element in New Jersey. However, this error, which has not been raised here by AT&T, would have only a minimal impact on the overall DUF rate, and does not justify reconsideration of the Board's Order.

[101] See Supplemental Reply Declaration of Patrick A. Garzillo and Marsha S. Prosini dated April 19, 2002, submitted in I/M/O Application by Verizon New Jersey, Inc., Bell Atlantic Communications, Inc. (d/b/a /Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region InterLATA Services in New Jersey, CC Docket No. 02-67 (citing Application by Verizon New England, Inc., Bell Atlantic Connections, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global

Because AT&T offers no evidence to support its claims that the Verizon NJ DUF rates are unreasonable, AT&T's request for the Board to revise the DUF rate should be denied.

Networks, Inc. and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Vermont, CC Docket No. 02-7, Memorandum Opinion and Order (2002)).

V. THE BOARD HAS COMMITTED NO ERRORS OF LAW OR FACT REGARDING THE RATES, TERMS AND CONDITIONS PURSUANT TO WHICH VERIZON NJ OFFERS ADVANCED SERVICES

AT&T's Motion fails to make any showing that special circumstances justify reconsideration of the rates, terms and conditions of Verizon NJ's offering of advanced services to CLECs using line sharing or line splitting arrangements. Moreover, no clarification is necessary because the Board has already clearly rejected several AT&T's arguments advanced again in this Motion.

First, seeking a "clarification," AT&T itself confuses the issue by stating that a data provider in a "line sharing arrangement" should be able to continue to provide DSL service at appropriate UNE loop rates even if VNJ's voice service is terminated.[102] The Board's decision could not be clearer. When line sharing as a UNE is terminated -- as by definition it must be when VNJ is no longer providing voice service over the loop -- AT&T and any other CLEC can continue to provide DSL by purchasing a UNE loop from Verizon NJ.

The only language that AT&T relies upon in seeking a clarification is a sentence from the Line Sharing portion of the Final Order that AT&T quotes out of context. In context, the sentence (see emphasis in the quote below) is clear that the Board was rejecting AT&T's request to redefine line sharing to include a situation where Verizon NJ was no longer providing the voice:

> With regard to Verizon NJ's condition that would sever its responsibility to continue to provide the loop for the express purpose of permitting CLECs to provision xDSL service when Verizon NJ is no longer providing voice service, we agree with the Company. <u>Verizon NJ is under no legal obligation to continue to provide the unbundled loop solely to permit the CLEC to provide xDSL service</u>. The Company, however, is correct in making the

[102] AT&T Motion, at 23 (¶¶ 57-58).

> loop available at the unbundled rate associated with the loop to the CLEC to continue its provision of xDSL service or allowing the CLEC to disconnect service.[103]

Plainly, the Board stated that in a situation where the ILEC is no longer providing the voiceline, the situation would no longer be considered line sharing. As the Board recognized, "line sharing is technically only provided when Verizon NJ provides the voice component."[104]

What is equally clear from the Board's Final Order is that Verizon NJ provides alternatives for the data provider in a line sharing arrangement who seeks to continue to provide DSL service if Verizon NJ's voice service is terminated. In its Motion, AT&T quotes FCC Order language in support of its argument, i.e., "[i]n the event that a customer terminates incumbent LEC provided voice service on a line-shared line, the competitive data carrier is required to purchase the full stand-alone loop network element if it wishes to continue providing xDSL service."[105] The Final Order is completely consistent with that FCC language: "The Company…is correct in making the loop available at the unbundled rate associated with the loop to the CLEC to continue its provision of xDSL service…."[106] Moreover, the Board recognized that Verizon NJ has already agreed to make a DSL loop available to such carriers: "Verizon NJ...acknowledged that it is 'required to allow any CLEC who takes the entire loop to provide voice and data over that loop to the end user, or to allow another CLEC to do so.'"[107]

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[103] Final Order,at 218-19.

[104] Final Order, at 218. Apparently, even AT&T recognizes this fact at the present time. See AT&T Motion, at 23, n.16.

[105] AT&T Motion, at 23.

[106] Final Order, at 218.

[107] Final Order, at 171. As Stern and White stated in their October Rebuttal Testimony, "Verizon NJ does allow a CLEC to purchase an entire ADSL loop and switch port. With those UNEs it can offer a complete package of local, toll and Internet access services (and it may provide the services itself or subcontract to another provider) to its customers over a single loop, thereby spreading its loop costs over POTS, DSL, and toll services. Exh. VNJ-19, at 14.

There is no need for the Board to change its position, as AT&T suggests (AT&T Motion at 24), to avoid disconnection of a customer's DSL service when the customer discontinues using Verizon NJ as its voice provider. Outside of the line sharing scenario, for CLECs using a Platform arrangement, Verizon NJ had made available the opportunity for a CLEC to engage in line splitting, i.e., to offer both voice and data service over a single unbundled loop by itself or in combination with another CLEC. The carriers are free to work out an arrangement pursuant to which the customer can use one CLEC for voice and a second CLEC or DLEC for data.[108] AT&T has no excuse for not pursuing the line splitting option that is available with itself or another voice provider in such a case, if it wishes to continue providing voice service and not buying the whole loop.

In addition, contrary to AT&T's allegations, there is ample legal authority to support the Board's position. Noting that its current rules "support the availability of line splitting" in the manner now approved by the Board, the FCC clarified its requirement with the following relevant language:

> an incumbent LEC must permit competing carriers providing voice service using the UNE-platform to either self-provision necessary equipment or partner with a competitive data carrier to provide xDSL service on the same line. . . .
>
> * * *
>
> [I]ncumbent LECs have a current obligation to provide competing carriers with the ability to engage in line splitting arrangements. . . . As a result, independent of the unbundling obligations associated with the high frequency portion of the loop that are described in the *Line Sharing Order*, incumbent LECs must allow competing carriers to offer both voice and data service over a single unbundled loop. This obligation extends to situations where a competing carrier seeks to provide combined voice and

[108] Tr. 12/19, at 1471, 1500.

data services on the same loop, or where two competing carriers join to provide voice and data services through line splitting.

> [I]ncumbent LECs have an obligation to permit competing carriers to engage in line splitting using the UNE-platform where the competing carrier purchases the entire loop and provides its own splitter. For instance, if a competing carrier is providing voice service using the UNE-platform, it can order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment and unbundled switching combined with shared transport, to replace its existing UNE-platform arrangement with a configuration that allows provisioning of both data and voice services. As we described in the *Texas 271 Order*, in this situation, the incumbent must provide the loop that was part of the existing UNE-platform as the unbundled xDSL-capable loop, unless the loop that was used for the UNE-platform is not capable of providing xDSL service.[109]

Consistent with this ruling, Verizon NJ allows a CLEC to purchase an unbundled loop and unbundled port to provide both the voice and data to the same customer.[110] To suggest that Verizon NJ has a monopoly over the customer by virtue of its use of the loop for voice service is to ignore completely the availability of the UNE loop.[111]

For all of the above stated reasons, the Board's Order requires no clarification with respect to the alternatives that are available to CLECs when the ILEC no longer provides voice service -- line sharing is terminated and the CLEC can continue to offer DSL service over an unbundled loop.

With regard to its arguments urging the Board to order Verizon NJ to file a tariff and compliance filing to set forth the rates, terms and conditions regarding line splitting (AT&T Motion, at 24-25), AT&T inappropriately attempts to use a Motion for Reconsideration to

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[109] Line Sharing Reconsideration Order, at 16, 18, 19 (emphasis added, citations omitted).

[110] Tr. 12/19, at 1451-52, 1528, 1544.

[111] AT&T Motion, p. 24.

reargue positions advanced during the proceedings before the Board.[112] That itself provides sufficient grounds for denial of the Motion Moreover, the Board had several good reasons not to adopt AT&T's recommendations.

First, there is no underlying UNE tariff for UNE-P, xDSL, or line sharing that a line splitting tariff would reference in New Jersey. Rather, in New Jersey such arrangements are purchased pursuant to Interconnection Agreements, and there is no reason why line splitting cannot be purchased pursuant to those same agreements. To start writing a tariff and then running a tariff review proceeding now could take considerable time, during which time anyone who was seriously interested in line splitting could have already purchased it under an agreement.

Second, the terms and conditions for all currently available scenarios of line splitting were developed cooperatively in the New York Public Service Corporation's collaborative proceeding on this subject, in which ATT was an active participant.

Third, it must be recognized that AT&T had ample opportunity to examine the terms and conditions pursuant to which Verizon NJ offers a DSL loop as an unbundled element -- the loop to be used by CLECs who choose to line split.

Fourth, there was extensive questioning in the proceeding regarding where a CLEC or DLEC could access the terms and conditions necessary for a shift from line sharing to taking a DSL UNE loop for two carriers who wanted to develop a line splitting arrangement. The record reflects that Ms. Stern and Mr. White clearly described information available on the Verizon web site, provided in workshops and through the Verizon account manager.[113]

[112] AT&T's Initial Brief, at 12 and Reply Brief, at 106.

[113] Tr. 12/20/00, at 1632-45.

Fifth, AT&T and other interested parties were given the opportunity to submit comments to the Board regarding the terms and conditions for converting from a line sharing UNE to a DSL loop for line splitting, but most of AT&T's focus at that time was on its recommendation that Verizon NJ be compelled to provide a line splitter that could be used by the CLECs for line splitting over a UNE loop. Having put all its eggs in that basket, AT&T cannot now be heard to complain that the Board should reconsider arguments that it never advanced during the case.

Sixth, AT&T's suggestion that tariffs or a compliance filing will resolve disputes regarding the manner in which line sharing will be permitted ignore the fact that many of the terms and conditions for such arrangements relate to the business relationship that will exist when two carriers are line splitting.[114] Depending on how the business relationships described above are resolved, there would be numerous possible systems changes and service center process changes required.[115]

AT&T's Motion is nothing but reargument when it seeks to compel Verizon NJ to bear all of the responsibility for establishing the relevant terms and conditions to facilitate the CLECs' line splitting. During the proceeding, AT&T already argued that the Board should not rely upon the New York Collaborative sessions at which line splitting options were discussed and issues resolved. Detailed line splitting service descriptions developed collaboratively in New York

[114] Examples of the business issues that needed to be resolved were contained in the Stern and White October Rebuttal testimony: "who is allowed to order migration of voice service -- the new voice CLEC, the data CLEC, or both? Who is allowed to order the disconnection of a voice service- the old voice CLEC, the new voice CLEC, the data CLEC, or all three? Who is allowed to order migration of data service- the new data CLEC, the voice CLEC, or both? Who is allowed to order the disconnection of a data service -- the old data CLEC, the new data CLEC, the voice CLEC, or all three? Will voice CLECs accept line splitting orders from all DLECs or only certain ones? Will data CLECs accept line splitting orders from all voice CLECs, or only certain ones? Should Verizon bill the data CLECs for the data service, and the voice CLECs for the voice service, or should we bill all of the charges to the voice CLEC, who in turn will settle with the data CLEC, or should we bill all of the charges to the data CLEC, who in turn will settle with the voice CLEC? Who controls the testing and repair of the service?" See Exh. VNJ-19, at 116 (Stern/White).

[115] Exh. VNJ-19, at 15-16 (Stern/White).

specifically address two scenarios.[116] The first calls for the addition of data to an existing UNE-P.[117] The second calls for the migration of an existing line sharing arrangement to line splitting.[118] Both include Verizon facilitating line splitting by CLECs."[119]

On reconsideration, AT&T offers no evidence of the alleged "numerous disputes" that it says are inevitable.[120] There is no evidence that there have been any problems that would be resolved by using a tariff or compliance filing to set forth the relevant terms and conditions.

The Board need not reconsider the portion of its Order directing Verizon NJ to include line and station transfer charges as part of its line splitting terms and conditions.[121] Verizon NJ developed, at the CLECs' request, a rate for migrating a Verizon NJ voice customer from a non-xDSL-capable line to an xDSL-capable line ("line and station transfer") so CLECs would have a greater opportunity to serve an end user with a DSL service.[122] The non-recurring rate, developed using the same methodology Verizon NJ used to develop its other non-recurring rates, recovers coordination costs, as well as costs for the central office and field technicians who make the transfer.[123] When line splitting was introduced, the terms and conditions were carried forward using the line sharing model as the guideline. On reconsideration, AT&T has failed to show why the Board should not incorporate line and station transfer for use in conjunction with helping

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[116] Proceeding on Motion of the Commission to Examine Issues Concerning the Provision of Digital Subscriber Line Services, Opinion and Order Concerning Verizon's Wholesale Provision of DSL Capabilities, Case 00-C-0127, Opinion No. 00-12 (Oct. 31, 2000) ("NY Wholesale DSL Order"), at 19.

[117] Proceeding on Motion of the Commission to Examine Issues Concerning the Provision of Digital Subscribe Line Services, Order Granting Clarification, Granting Reconsideration in Part and Denying Reconsideration in Part, and Adopting Schedule, Case 00-C-0127 (NY PSC, Jan. 29, 2001) ("NY DSL Reconsideration Order"),at 11-12 and n. 18.

[118] NY DSL Reconsideration Order, at 12.

[119] VNJ Reply Brief, at 167-68.

[120] AT&T Motion, at 25.

[121] See AT&T Motion, at 25 (¶ 60)(citing Final Order, at 227).

[122] Exh. VNJ-9, Attachment 3, Exh. M (Meacham).

[123] VNJ Initial Brief,at 22; Exh. VNJ-10, Line and Station Transfer Study.

CLECs engage in line splitting. Verizon NJ is not opposed to providing line and station transfers to CLECs in another manner than it is offered today, but seeking such a change through a motion for reconsideration is not appropriate.

The Board's Order correctly includes a charge for removal of bridged taps on loops up to 18,000 feet. See AT&T Motion, at 25 (¶61). Although the Board stated that "Verizon NJ's proposal correctly does not seek to charge CLECs for loop conditioning on lines less than 18,000 feet from the central office," it was referring to Verizon NJ's proposal regarding load coil removal. In describing Verizon NJ's position on loop conditioning, the Board stated:

> Verizon NJ explained that "[c]onditioning a loop involves activities such as removing loading coils, bridged taps, filters, range extenders and similar devices commonly used to assist in the provision of analog voice and data transmission, where a competitive carrier requests access to the high-frequency portion of the local loop and such devices preclude deployment of xDSL." (VNJb at 175). Verizon NJ claimed that 'there are limited circumstances under which loop conditioning charges will be incurred by CLECs.' (Id. at 176). For example, Verizon NJ stated that "[f]or loops shorter than 18,000 feet from the central office, Verizon NJ does not impose any charges for the rare occasions where removal of load coils is necessary because Verizon NJ's design criteria do not call for load coils on loops less than this length . . ."[124]

With respect to bridged taps, although it is relatively uncommon to find bridged taps at a level sufficient to significantly impair the quality of DSL transmission, in those infrequent cases, Verizon NJ's incurs costs for bridged tap removal and the Board rightly included a Bridge Tap removal charge in Attachment B for those infrequent occasions.[125]

The Board was well aware that the record supports Verizon NJ's proposal to charge for removal of bridged taps in loops under 18,000 feet from the central office. In its Final Order, the

[124] Final Order, at 179; Exh. VNJ-18, Exhibit C, §1.1.4.; Exh. VNJ 20, at 51 (Stern/White).

[125] See Exh. VNJ-20, at 43 (Stern/White November Rebuttal). See also VNJ Initial Brief at 176-77 (detailing VNJ's position regarding loop coil removal and bridge taps).

Board noted: "Verizon NJ only proposes to charge loop conditioning charges in those limited instances where a CLEC seeks to use an all copper loop that is over 18,000 feet," and "current loop design guidelines permit the continued presence of bridged taps in copper loops, even in redesigned or newly constructed plant."[126] For these reasons, the Board should not alter Attachment B.

AT&T seeks clarification that loop conditioning charges may only be imposed where the CLEC requests that line conditioning be performed. AT&T Motion, at 25-26 (¶ 62). Without any reference to record evidence, AT&T now asserts that "[t]his clarification is necessary to address a situation where a CLEC intends to offer xDSL service based on pre-qualification data that indicate line conditioning is unnecessary." Verizon NJ "makes [it] available as an unbundled network element a 2-wire compatible loop (for ADSL) and a 4-wire compatible loop (for HDSL)."[127] Instances can occur when in order to make a compatible loop available, it is necessary to move the customer from a line with Digital Loop Carrier (DLC) to an available copper loop. There is no way to complete the order under those circumstances without doing so. If AT&T seeks to have Verizon NJ stop the process and obtain further authorization before Verizon NJ engages in the necessary line and station transfer, there are procedures for AT&T to seek such a change in the process, but those do not include raising its request for the first time on a Motion for Reconsideration. Verizon NJ is willing to work with AT&T on resolving this issue in an appropriate forum.

With regard to log qualification rates and processes (AT&T Motion, at 26 (¶ 63)), AT&T again simply reasserts its arguments that Verizon NJ should not be permitted to charge recurring rates for mechanized loop qualification rates, but should be limited to non-recurring charges only

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[126] Final Order, at 181.

for those carriers who elect to use the database that it maintained and updated for loop qualification.[128] The Board's Final Order states clearly that Verizon NJ may assess CLECs "the charge associated with electronic access," and does not limit the charges to non-recurring charges. The costs to be recovered include the cost of building and maintaining the loop qualification information database, including the labor-related costs of performing Multi-Line Tests, the program development and refinements, the loading and extracting of data, and other ongoing maintenance and update activities.[129] Verizon recently began implementing a system so that CLECs could enter their request and get information from the LFACS database electronically.[130] The charge also recovers costs associated with mechanized loop testing ports in those central offices that were added to the original xDSL deployment schedule. Also included are enhancements to the pre-qualification process, such as information regarding why lines do not qualify, and updates to the LFACS process. Contrary to the assertion of AT&T,[131] these costs are appropriately spread over all forecasted xDSL lines (CLEC and Verizon NJ) because the database is necessary only for xDSL services.[132]

CONCLUSION

Verizon NJ respectfully submits that for the above reasons, AT&T's and WorldCom's motions should be denied.

Respectfully submitted,
WILENTZ, GOLDMAN & SPITZER

[127] Verizon NJ Initial Brief, at 174.

[128] See, e.g., AT&T Reply Brief, at 104-105.

[129] Exh. VNJ-20, at 80-81 (Stern/White).

[130] Tr. 2/8, at 3797; Exh. VNJ-20, at 80-82 (Stern/White).

[131] AT&T Motion, at 26.

[132] See Exh. VNJ-20, at 81.

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In the Matter of the Board's Review of Unbundled Network Elements, Rates, Terms and Conditions of Bell Atlantic – New Jersey, Inc.
Docket No. TO00060356

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